

SECTION A - SOLICITATION/CONTRACT FORM

OMB Approval No. 9000-0008

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) ►		RATING		PAGE OF 1 121 PAGES	
2. CONTRACT NO.		3. SOLICITATION NO. DE-RP26-04NT42256		4. TYPE OF SOLICITATION SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED November 12, 2004	
6. REQUISITION/PURCHASE NO.		7. ISSUED BY U.S. Department of Energy, National Energy Technology Laboratory P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507-0880		8. ADDRESS OFFER TO (If other than Item 7)			

NOTE: In sealed bid solicitations, "offer" and "offeror" mean "bid" and "bidder."

SOLICITATION

9. Sealed offers in original and 0 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in IPPS Electronic Submission until 8:00 pm EST local time January 4, 2005
(Hour) (Date)

CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ►		A. NAME ANGELA BOSLEY		B. TELEPHONE NO. (NO COLLECT CALLS) AREA CODE 304 NUMBER 285-4149 EXT.		C. E-MAIL ADDRESS Angela.Bosley@netl.doe.gov	
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 180 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8) ►		10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:		AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR		CODE	FACILITY	1. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
DUNS:					
15B. TELEPHONE NUMBER		15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE – ENTER SUCH ADDRESS IN SCHEDULE		17. SIGNATURE	
AREA CODE	NUMBER	EXT.		18. OFFER DATE	

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()				23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ►	
24. ADMINISTERED BY (If other than Item 7)		CODE		25. PAYMENT WILL BE MADE BY	
				CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)			27. UNITED STATES OF AMERICA (Signature of Contracting Officer)		28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

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SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**B.1 SERVICES BEING ACQUIRED - TASK ORDERS (AUG 2003)**

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the following items of work for the term specified in Part I, Section F and as specified in actual task orders awarded in accordance with Part I, Section H, clause entitled "Ordering Procedures:"

Item 1 - Services entitled Energy Star, Equipment Standards and Analysis, and Building Technologies Support Services in accordance with Part III, Section J, Attachment A, Statement of Work.

Item 2 - Reports as prescribed in accordance with Part III, Section J, Attachment B, "Reporting Requirements Checklist" and Reporting Requirements established per each task order.

B.2 TYPES OF TASK ORDERS

Task Orders issued under this contract will be in accordance with the terms and conditions set forth in Section H of this contract.

(a) Cost-Plus-Fixed-Fee Task Orders

Task Orders may be issued to require the Contractor to complete a specific task (or tasks) for cost plus a fixed fee. The fixed fee shall be determined on an individual task basis. If a task will be issued on a cost-plus-fixed-fee basis, the Contractor will be requested to propose the fee amounts at the time proposals are requested for the task. The amount of fixed fee for each task order is subject to negotiation. The fixed fee will be expressed as a discrete dollar amount, not as a percentage of the cost, and will be based on the amount negotiated and agreed upon.

(b) Firm Fixed Price Task Orders

Task orders may be issued to require the Contractor to complete a specific task (or tasks), for a firm fixed price. The Contractor's task order proposal for firm fixed price completion task orders shall indicate the proposed DPLH and the labor categories utilized. ODC and travel costs required for performance of the task order shall be included in each specific task order proposal, as well as any profit.

B.3 CEILING PRICE OF CONTRACT (JUL 1991)

The ceiling price of this contract, inclusive of Fee is \$[TBD]. All orders including CPFF and FFP count against this ceiling.

B.4 ESTIMATED LEVEL OF EFFORT (JUNE 2003)

In accordance with Part I, Section H, clause entitled "Level of Effort", the Contractor shall provide the following estimated total Direct Productive Labor-Hours (DPLH):

PERIOD	DPLH
Base Period (36 months)	171,450
Option 1 (12 months)	57,150
Option 2 (12 months)	57,150

*DPLH is based on 1800 man-hours per year.

B.5 OPTION TO EXTEND SERVICES

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the

Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of the end of the contract period. Primary application of this authority would occur if delays in awarding a successor contract at the scheduled completion of this award were apparent

B.6 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT. (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within the terms of the contract provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 months.

B.7 ANNUAL INDIRECT RATE SUBMISSIONS (JULY 2002)

(a) Introduction

- (1) Indirect billing, revised billing (as necessary), and final rate agreements must be established between a Contractor and the Department of Energy (DOE) for each of the Contractor's fiscal years for the life of the cost reimbursement type contract. These indirect rate agreements allow a Contractor to recover indirect expenses incurred during a fiscal year for which final indirect rates have not been established.
- (2) Indirect billing and revised indirect billing rate proposals must represent the Contractor's best estimate of the anticipated indirect expenses to be incurred and the estimated allocation base for the current fiscal year in accordance with their approved accounting system. Revised billing rates allow a Contractor or DOE to adjust the approved billing rates, based upon updated information, in order to prevent significant over or under billings. Revised billing rates, once established, are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings which used the previously approved billing rates.
- (3) A final indirect rate proposal represents the indirect rate expenses actually incurred during a fiscal year and the actual business base experienced. Once established they are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings if the established final rates differ from the previously approved billing rates.
- (4) FAR 42.703(a) stipulates that "A single agency [see FAR 42.705-1(a)] shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding upon all agencies and their contracting offices, unless otherwise specifically prohibited by statute." This single Government agency is referred to as the Cognizant Federal Agency (CFA). The CFA is normally the Federal agency which has the largest unliquidated contract dollar amount by fiscal year with a Contractor.
- (5) The establishment of rates for the reimbursement of independent research and development/bid and proposal costs shall be in accordance with the provisions of FAR 31.205-18, "Independent Research and Development and Bid and Proposal Costs," and both FAR Subpart 42.7 and DEAR 931.205-18, "Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs."
- (6) Sections (b) and (c) or (d) of this clause define the requirements to be followed by the Contractor

in establishing indirect rates for contracts when DOE is the CFA and when DOE is not the CFA. Specific instructions for submittal of indirect rate proposals to agencies other than DOE must be obtained from the agency involved.

(b) Requirements whether or not DOE is the CFA

- (1) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable sections of FAR Part 30, "Cost Accounting Standards," FAR Part 31 and DEAR 931, "Contract Cost Principles and Procedures," in effect as of the date of this contract.
- (2) Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the CFA subject to acknowledgment by the DOE IRCO. These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the CFA subject to acknowledgment by the DOE IRCO.
- (3) The Contractor shall continue to use the latest DOE or CFA approved billing rate(s) which have been acknowledged by the DOE IRCO until those rates are superseded by establishment of final rates or more current billing rates. In those cases where current billing rates have not been established, the latest approved final rates shall be used for invoicing, unless it is determined by the DOE IRCO that use of said rates would not provide for an equitable recovery of indirect costs. In those instances the DOE IRCO will take whatever steps are necessary to establish rates that DOE considers to be reasonable for billing purposes.
- (4) All Indirect Rate agreements and correspondence shall be submitted to:

U.S. Department of Energy
National Energy Technology Laboratory
626 Cochrans Mill Road
P.O. Box 10940
Contracting Officer for Indirect Rate Cost Management
Building 921-I07
Pittsburgh, PA 15236-0940

(c) Requirements when DOE is the CFA

- (1) No later than 90 days after the close of its fiscal year, the Contractor shall identify to the DOE Indirect Rate Contracting Officer (IRCO) all of its contracts with Federal agencies, either as a prime or as a subcontractor (any level), and provide the following information for those contracts:

Name of Federal Agency
Contract Number
Contract Value (total and by fiscal year)
Period of performance
Type of contract (CPFF, FFP, etc.)

- (2) In accordance with the "Allowable Cost and Payment" clause (DEAR 952.216-7) the Contractor, as soon as possible but not later than 90 days after the close of its fiscal year, shall submit to the DOE IRCO, identified in paragraph (b)(4) of this clause, a proposal for final indirect rates based on the Contractor's actual costs for the period, together with all supporting data. The Contractor's failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of the vouchers.
- (3) The settlement of the final indirect rates and indirect costs shall be accomplished prior to the Contracting Officer's approval of the final payment.

- (4) Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the DOE IRCO. These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the cognizant DOE IRCO (see FAR 42.704).
 - (5) The Contractor shall provide to the DOE IRCO annually, no later than 30 days after the close of its fiscal year, a billing rate proposal for the ensuing fiscal year, with supporting data. Failure to provide the required rate proposals in a timely fashion may impact payment of vouchers and could ultimately result in suspension of the indirect expense portion of vouchers.
 - (6) If the projected indirect expenses or bases change substantially during any fiscal year, the Contractor shall notify the DOE IRCO in writing and request an adjustment to the indirect billing rates. Upon review of the revised billing rate proposal the DOE IRCO may adjust the previously approved billing rates. Such adjustments will apply retroactively to all billings containing the previously approved rates for the fiscal year in question and the Contractor shall make all appropriate adjustments on its next voucher.
- (d) Requirements when DOE is not the CFA
- (1) When another Federal Agency or a different DOE Office has the CFA responsibility for the establishment of indirect rates with the Contractor, the Contractor shall provide a copy of the rate proposals, including all supporting documentation, submitted to the CFA. These submittals to DOE shall be within the time periods established within paragraphs (c)(2) and (c)(5) of this clause unless a written request for an extension is submitted by the Contractor and granted by DOE. Failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of vouchers.
 - (2) The Contractor shall provide copies of all rates established by that CFA and any correspondence related to indirect rates to the DOE IRCO. It is imperative that the DOE IRCO be provided signed copies of all rate agreements established by the CFA since these agreements must be in the possession of, reviewed, and acknowledged by the DOE IRCO before any rates contained therein can be used by the Contractor for cost reimbursement.
 - (3) The Contractor shall identify, if known, the Cognizant Federal Agency (CFA) responsible for the establishment of indirect rates, factors, and Facilities Capital Cost of Money Rates.

B.8 LIMITATION OF FUNDS

Pursuant to FAR 52.232-22, "Limitation of Funds," total funds in the amount of \$[TBD] are obligated herewith and made available for payment of allowable costs and fixed fee to be incurred from the effective date of this contract through the period estimated to end [TBD].

THE FOLLOWING CLAUSE PERTAINS ONLY TO COST-REIMBURSEMENT TASK ORDERS ISSUED AGAINST THIS CONTRACT.

B.9 ESTIMATED COST AND FIXED FEE

BASE CONTRACT

The total estimated cost plus fixed fee for the work to be accomplished under this contract is:

Total Estimated Cost ----- \$[TBD]

Fixed Fee ----- \$[TBD]

Total Estimated Cost Plus Fixed Fee ----- \$[TBD]

Minimum Order: 25% of the total estimated cost plus fixed fee for the base period and each subsequent option period if exercised

Maximum Order: 150% of total estimated cost plus fixed fee for the base period and each subsequent option period if exercised

OPTION I

Should the Government elect to require the contractor to perform the option identified in the Statement of Work, Part III, Section J, Attachment A, the estimated cost and fixed fee will be increased by the following amount:

Total Estimated Cost ----- \$[TBD]

Fixed Fee ----- \$[TBD]

Total Estimated Cost Plus Fixed Fee ----- \$[TBD]

OPTION II

Should the Government elect to require the contractor to perform the option identified in the Statement of Work, Part III, Section J, Attachment A, the estimated cost and fixed fee will be increased by the following amount:

Total Estimated Cost ----- \$[TBD]

Fixed Fee ----- \$[TBD]

Total Estimated Cost Plus Fixed Fee ----- \$[TBD]

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 STATEMENT OF WORK (NOV 1997)

The Statement of Work is located in Part III -- Section J, Attachment A to this contract.

C.2 REPORTS (MAY 1998)

Reports shall be prepared and submitted in accordance with the reporting requirements described in Part III -- Section J, Attachment B.

SECTION D - PACKAGING AND MARKING**D.1 PACKAGING (FEB 1999)**

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).

Except for those reports required by the Reporting Requirements Checklist of the contract, which are coded by A (As required) where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded A.

D.2 MARKING (JAN 1999)

Each package, report or other deliverable shall be accompanied by a letter or other document which:

- (1) Identifies the contract by number under which the item is being delivered.
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

SECTION E - INSPECTION AND ACCEPTANCE**E.1 INSPECTION (NOV 1997)**

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

E.2 ACCEPTANCE (MAR 1999)

Final acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer.

THE FOLLOWING CLAUSE PERTAINS ONLY TO COST-REIMBURSEMENT TASK ORDERS ISSUED AGAINST THIS CONTRACT.**E.3 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT. (APR 1984)**

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

THE FOLLOWING CLAUSE PERTAINS ONLY TO FIXED-PRICE TASK ORDERS ISSUED AGAINST THIS CONTRACT.**E.4 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)**

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(a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering

the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.

SECTION F - DELIVERIES OR PERFORMANCE**F.1 PERIOD OF PERFORMANCE (BASE CONTRACT WITH OPTION(S)) (JUNE 2003)****BASE CONTRACT**

The work to be performed under the Base Contract (Reference Part I, Section, B) shall commence on the effective date of the contract and shall continue for thirty-six (36) months.

NOTE: The government may elect not to exercise either of the options, to exercise either option, or to exercise both options.

OPTION I

If Option I is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of twelve (12) months from the effective date of the exercised option. This includes time for submission of all reports, review of those reports by DOE, and submission of the approved final report by the Contractor.

OPTION II

If Option II is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of twelve (12) months from the effective date of the exercised option. This includes time for submission of all reports, review of those reports by DOE, and submission of the approved final report by the Contractor.

F.2 EXERCISE OF OPTION(S) (NOV 1997)

The Department of Energy has included an option to extend the term of this contract. In order to demonstrate the value it places on quality performance, the Department has provided a mechanism for continuing a contractual relationship with a successful contractor that performs at a level which meets or exceeds quality performance expectations of the Government. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the contractor's performance under this contract.

F.3 PRINCIPAL PLACE OF PERFORMANCE (FEB 1998)

The principal place of performance under this contract shall be at the Contractor's facility located in [TBD].

F.4 52.242-15 STOP-WORK ORDER. (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing,

accordingly, if -

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

SECTION G - CONTRACT ADMINISTRATION DATA**G.1 CORRESPONDENCE PROCEDURES (FEB 2000)**

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence

Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Contracting Officer's Representative, with an information copy of the correspondence to the DOE Contract Specialist.

(b) Property Correspondence

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract's Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer's Representative and the DOE Contract Specialist.

(c) Indirect Rate Correspondence

All correspondence relating to the establishment, revision, and negotiation of billing and final indirect cost rates shall be addressed to the Contracting Officer for Indirect Cost Rate Management, with information copies of the correspondence to the DOE Contract Specialist.

(d) Other Correspondence

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(e) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-AM26-05NT42256, and identifying the specific contract action requested.

G.2 SUBMISSION OF VOUCHERS/INVOICES (APR 2001)

(a) Voucher Form (SF 1034)

In requesting reimbursement, contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal), and F4220.50 (Statement of Cost). Electronic versions of the SF1034 and the F4220.50 can be found on the NETL website at <http://www.netl.doe.gov/business/forms/forms.html>. The Statement of Cost shall be supported by the information contained in Paragraph (c) of this clause. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

- (1) Name and address of contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or service
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms
- (6) Name (where practicable), title, phone number and complete mailing address of responsible

official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)

- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Statement of Cost

The SF 1034 shall be completed so as to make due allowances for the Contractor's cost accounting system. The costs claimed shall be only those recorded costs (including cost sharing) which are authorized for billing by the payment provisions of this contract. If this is a cost-plus-fixed-fee contract, the amount claimed for the fixed fee should be based on a percentage of completion of the work. If this is a cost sharing contract, the "Government Share" must agree with the amount billed on the SF 1034. Any cost sharing or in-kind contributions incurred by the Contractor and/or third party during the billing period must be included in the invoice and adequately supported. Indirect rates claimed shall be billed in accordance with the "Allowable Cost and Payment Clause." The Certification (block 11) must be signed by a responsible official of the Contractor.

(c) Supporting Documentation

Direct costs (e.g., labor, equipment, travel, supplies, etc.) claimed for reimbursement on the Statement of Cost must be adequately supported. The level of detail provided must clearly indicate where the funds were expended. For example, support for labor costs must include the labor category (e.g., program manager, senior engineer, technician, etc.) the hourly rate, and the labor cost per category; equipment costs must be supported by a list of the equipment purchased, along with the item's cost; supporting data for travel must include the destination of the trip, number and labor category of travelers, transportation costs, per diem costs, and purpose of the trip; and supplies should be categorized by the nature of the items (e.g., office, lab, computer, etc.) and the dollar amount per category.

Indirect rates used for billings must be clearly indicated, as well as their basis of application. When the cognizant Administrative Contracting Officer (ACO) or auditor approves a change in the billing rates, include a copy of the approval.

(d) Submission of Voucher

Submit one copy of the original voucher including the certified Statement of Cost and Supporting Documentation to the following payment office:

U. S. Department of Energy
Oak Ridge Financial Services Center
P. O. Box 4787
200 Administration Road
Oak Ridge, TN 37831

In addition, submit two copies of the voucher including the certified Statement of Cost and Supporting Documentation to the following address:

U. S. Department of Energy
National Energy Technology Laboratory
ATTN: Accounts Payable
3610 Collins Ferry Road, P.O. Box 880
Morgantown, WV 26507-0880

(e) Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained). The period of performance covered by vouchers

should be the same as covered by any required monthly technical progress reports and/or monthly cost reports.

(f) Payment Method

In accordance with Mandatory Information for Electronic Funds Transfer Payment, payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(g) Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the Contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

(h) Status of Payments

The Oak Ridge Financial Service Center (ORFSC) has a system via Internet, in which contractors can request information about payments by invoice, by contract number, and/or by paid date. The system is called Vendor Inquiry Payment Electronic Reporting System (VIPERS) and is available to contractors at the following website: <http://finweb.oro.doe.gov/vipers.htm>. Contractors must have a federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

G.3 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR (DEC 1999)

A support service contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this contractor has access to your business confidential cost/rate information. A special provision in this contractor's award requires the confidential treatment by all contractor employees of any and all business confidential information of other contractors and financial assistance recipients to which they have access.

G.4 ACCOUNTABILITY OF COSTS/SEGREGATION OF TASK ORDERS (JUNE 2003)

All costs incurred by the Contractor under this contract shall be segregated by each Task Order. The Contractor shall, therefore, establish separate "Job Order Accounts and Numbers" for each task order issued and shall record all incurred costs in the appropriate job order account assigned each Task Order.

There shall be no co-mingling of costs between Task Orders.

THE FOLLOWING CLAUSE PERTAINS ONLY TO COST-REIMBURSEMENT TASK ORDERS ISSUED AGAINST THIS CONTRACT.

G.5 PAYMENT OF FIXED FEE (LEVEL-OF-EFFORT CONTRACTS) (NOV 1997)

The fixed fee specified in the Task Order clause entitled, "Estimated Cost and Fixed Fee" shall be paid to the Contractor on the basis of the number of Direct Productive Labor Hours (DPLH) delivered relative to the number of DPLH set forth in the clause entitled, "Estimated Level of Effort", Section B, clause B.4.

The amount of fixed fee earned and payable under the contract, prior to final payment, shall be the amount derived by dividing the total number of DPLH delivered to date under the contract by the total number of DPLH to be delivered under the contract, and multiplying the result by the total fixed fee set forth in the clause; provided, however, that this amount does not exceed 85% of the fixed fee specified in the Task Order clause entitled "Estimated Cost and Fixed Fee" (See FAR 52.216-8 Fixed Fee).

The total amount of fixed fee earned under this contract upon its expiration shall be 100% of the fixed fee set forth in the Task Order clause entitled "Estimated Cost and Fixed Fee"; provided, however, that the number of DPLH delivered under the contract equals or exceeds 90% of the total DPLH to be delivered under the contract (See the clause entitled "Estimated Level of Effort").

THE FOLLOWING CLAUSE PERTAINS ONLY TO FIXED-PRICE TASK ORDERS ISSUED AGAINST THIS CONTRACT.

G.6 PAYMENTS UNDER FIRM FIXED PRICE TASK ORDERS (MAY 2001)

The Government shall pay the Contractor upon the submission of proper invoices or vouchers, the prices stipulated in the firm fixed price task order for supplies delivered and accepted or services rendered and accepted, less any deduction provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if:

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 60 percent of the total task order price.

SECTION H - SPECIAL CONTRACT REQUIREMENTS**H.1 CONSECUTIVE NUMBERING (JAN 1999)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

H.2 TECHNICAL DIRECTION (JUNE 1998)

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
 - (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
 - (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract; or
 - (2) Advise the Contractor within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes - Alternate I".

H.3 MODIFICATION AUTHORITY (NOV 1997)

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work,
- (b) waive any requirement of this contract, or
- (c) modify any term or condition of this contract.

H.4 GOVERNMENT PROPERTY AND DATA (JAN 1999)

- (a) Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this contract any equipment (including office equipment), furniture, fixtures or other personal property items.

- (b) Acquisition Authorization Requirements

- (1) In the course of performance of this contract, the Contractor may only acquire and direct charge to this contract such items on the "List of Government Property -- Contractor Acquired" (Part III -- Section J, Attachment D to this contract.
 - (2) The Contractor may request authorization for acquisition of additional items from the Contracting Officer. Any such request shall include an analysis of the most economical method of acquisition (e.g., lease versus purchase) and shall describe the material equity arising from any proposed lease arrangement, such as option credits.
 - (3) Any changes in the acquisition authorization shall be reflected in a modification to this contract which revises the "List of Government Property -- Contractor Acquired" (Part III -- Section J, Attachment D to this contract.
 - (4) Authorization to acquire does not constitute consent to the placement of a subcontract.

- (c) Government-Furnished Property and Data

Except as otherwise authorized by the Contracting Officer in writing, only that property and data specifically included in the "List of Government-Furnished Property" (Part III -- Section J, Attachment D to the contract, shall be furnished.

- (d) Reporting Requirements

The reports required shall be submitted in accordance with 48 CFR 945 and the reporting requirements set forth in Part III, Section J, Attachment B.

The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not listed on the attachments referenced above.

H.5 KEY PERSONNEL/PROGRAM MANAGER (MAR 1998)

The key personnel, which includes the Program Manager, specified below, are considered to be essential to the work being performed under this award; moreover, any changes to these personnel require prior DOE Contracting Officer's written approval.

The Program Manager shall serve as the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall receive and execute, on behalf of the Contractor,

such technical directions as the DOE Contracting Officer's Representative may issue within the terms and conditions of the contract.

The following is a list of key personnel that have been approved for this contract:

<u>Name</u>	<u>Title</u>
[TBD]	[TBD]

Prior to diverting any of the specified individuals, the Contractor shall notify the Contracting Officer not less than thirty (30) calendar days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the Contracting Officer, with concurrence of the Contracting Officer's Representative.

H.6 TRAVEL AND PER DIEM COSTS (FEB 1998)

Costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any revision of such subchapter; and are allowable pursuant to the "Allowable Cost and Payment" clause, FAR 52.216-7.

Foreign travel shall be subject to DEAR 952.247-70.

H.7 PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS AND/OR CONSULTANTS (OCT 1998)

The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract, including consultants, for which advance notification is required under FAR 52.244-2, "Subcontracts".

Any request for subcontract/consultant approval shall include the elements prescribed by FAR 52.244-2, including subcontractor/consultant Representations and Certifications. For consultants the Contractor will obtain and furnish information supporting the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultants to others for performing consulting services of a similar nature.

Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts and/or consultants shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

The Contractor is hereby given consent to the placement of the following subcontractors, which were evaluated during negotiations:

[TBD]

Notwithstanding this consent, the Contractor shall ensure compliance with FAR 52.244-2. All subcontracts and/or consultants must contain all applicable flow-down clauses contained in Part II, Section I.

H.8 ORDERING PROCEDURE (DEC 2000)

Performance under this contract shall be subject to the following ordering procedure:

The Contractor shall incur costs under this contract only in the performance of Task Orders and revisions to Task Orders issued in accordance with this ordering procedure. No other costs are authorized without the express written

consent of the Contracting Officer (CO).

The Contracting Officer will issue a Task Proposal Request to the Contractor identifying (1) the type of task order and the task to be performed, (2) the task performance requirements, (3) the desired schedule of performance, (4) deliverables and required delivery dates, (5) authorized travel, and (6) any special instructions. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, view graphs, and other forms of presentation as appropriate. If appropriate, based on 48 CFR 945, property which is Government-furnished or Contractor-acquired will also be listed in Attachment D as well as in the individual Task Orders.

Task Orders will be issued on forms specified and provided by the Government. Task Orders will be numbered. A modification to the Task Orders will be identified by an alpha designation following the existing Task Order number indicating the revision sequence.

The Contractor shall submit within ten (10) calendar days, after receipt of each Task Order issued by the Contracting Officer, a one-time Contractor Task Management Plan. The Task Management Plan is the Contractor's overall estimate for the completion of the Task Order and shall include the following:

- (1) Directive Productive Labor Hours (DPLH) by labor category on a monthly basis, including overtime (if authorized), and total DPLH, including subcontractor and consultant DPLH, if applicable.
- (2) Travel, training, equipment, and materials estimate.
- (3) Estimated computer time and cost, if applicable.
- (4) Other pertinent information (e.g., indirect costs, inter-divisional transfers).
- (5) Estimated subcontractors and consultants costs, including DPLH if applicable. (Subcontractor and consultant costs need to be provided at same level of detail as the prime).
- (6) For Cost Plus Fixed Fee Task Orders, the Contractor will provide the total estimated cost, the proposed fixed fee for completion of the Task Order, and a monthly cost management plan. For Fixed Price Task Orders, the Contractor will propose a total firm fixed price.
- (7) Date of commencement of work, and any necessary revision to the schedule of performance.
- (8) Information responsive to any special instruction in the Task Order Request.

Task Proposal requests and Task Orders will be issued in writing, unless other wise authorized by the Contracting Officer.

The Contractor's Task Management Plan is subject to the review of the Contracting Officer or designee. After a Task Order is issued and the Contractor becomes aware that the estimated cost or level of effort will vary from the Task Management Plan (more than + or – 10% variance), then the Contractor shall promptly submit to the Contracting Officer or designee a revised Task Management Plan with explanatory notes.

This ordering procedure is of a lesser order of precedence than the "Limitation of Cost," "Limitation of Funds," "Completion Dates," "Term of Contract," or "Level of Effort" clauses of the contract. The Contractor is not authorized to incur costs on Task Orders which are not in compliance with any of those clauses of the contract.

H.9 LEVEL OF EFFORT (JUNE 2003)

In the performance of Task Orders issued pursuant to the ordering procedure of this contract, the Contractor shall provide that estimated total of Direct Productive Labor-Hours (DPLH) which is specified in Part I, Section B during the term of the contract. The term of the contract is defined as the total contract period, including all exercised options. Direct Productive Labor-Hours (DPLH) are defined as actual work hours exclusive of vacation, holiday, sick leave, and other absences.

The DPLH delineated in Part I, Section B, are provided for estimating purposes. Changes in programmatic requirements may cause a substantial increase or decrease in the number of DPLH identified in Part I, Section B. The Contractor shall be required to provide all DPLH which may be needed to complete the Task Orders issued during the term of the contract. However, the Contractor shall not proceed beyond the estimated DPLH unless authorized to do so in a contract modification issued by the Contracting Officer.

Cost Plus Fixed Fee Orders – No fee adjustment will be provided if the actual hours are within +/- 10% of the estimated DPLH cited in the task order. However, if the actual hours are greater or less than +/- 10% of the estimated DPLH, the variance will be prorated and an equitable adjustment (+/-) will be made to the estimated cost, fixed fee, and DPLH.

H.10 CONFIDENTIALITY OF INFORMATION (MAY 1998)

To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (a) Information which, at the time of receipt by the Contractor, is in the public domain;
- (b) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (c) Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (d) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

This clause shall flow down to all subcontracts.

H.11 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (JUNE 1998)

The Representations, Certifications and Other Statements of the Offeror for this contract are hereby incorporated by reference.

H.12 INDIRECT COSTS (MAY 1998)

Pending establishment of final indirect cost rates for any period, billing and reimbursement of indirect costs shall be made on the basis of provisional rates recommended by the cognizant Government auditor. When a rate change occurs, and after it has been audited and approved by the cognizant Government auditor, the Contractor shall inform the Contracting Officer by letter of the indirect rate change. This notification shall include a copy of the cognizant auditor's approval and the cost impact of the rate change on the program.

H.13 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) -- PRIOR APPROVALS (JUNE 2001)

The National Environmental Policy Act of 1969 (NEPA) requires that all Federal agencies consider the impacts of their projects on the human environment. As part of the DOE's NEPA requirements, the Contractor shall be required to supply to the DOE certain environmental information. DOE funds may only be expended by the Contractor on preliminary designs/drawings and/or environmental assessment activities in support of the NEPA determination process, or in a manner consistent with 40 CFR 1506.1, until DOE notifies the Contractor that all NEPA requirements have been satisfied. In the event that the Contractor expends its own or third party funds on activities not authorized by this provision, such expenditures are entirely at the Contractor's risk that DOE's NEPA analysis will support such activities.

H.14 CONTRACTOR PRESS RELEASES (APR 1998)

The DOE policy and procedure on news releases requires that all Contractor press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

H.15 PERMITS AND LICENSES (AUG 1999)

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of ES&H approvals that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The COR shall be notified as specific items are added or removed from the list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

H.16 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION (JAN 1999)

- (a) The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local law as, including codes, ordinances and regulations, covering safety, health and environmental protection.
- (b) The Contractor agrees to include paragraph (a) of this clause in first-tier subcontracts and agrees to enforce the terms of this clause.

H.17 INDEMNITY -- ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS (MAR 2003)

Should the Contractor, in the performance of work under this contract, fail to comply with the requirements of environmental permits, local laws or regulations, state laws or regulations, Federal laws or regulations, the Statement of Work and its Attachments, or a Task Order and cause any environmental, health, or safety liability to be assessed against the Government, the Contractor agrees to indemnify the Government for this liability. This requirement shall be placed in all subcontracts awarded by the Contractor under this contract. The provisions of this clause are limited to liabilities not otherwise addressed by other provisions of this contract.

H.18 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS (JULY 2003)

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-Made.

H.19 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003) (JULY 2003)

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

A copy of the DOE "Lobbying Brochure" which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal Contractors can be found at

<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Lobbying+Brochure?OpenDocument>

SECTION I - CONTRACT CLAUSES**I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations (Clauses starting with 52): <http://www.arnet.gov/far/index.html>
 Department of Energy Regulations (Clauses starting with 952): <http://professionals.pr.doe.gov> or
<http://www.netl.doe.gov/business/index.html>

- I.2 52.202-1 DEFINITIONS. (JUL 2004)
- I.3 952.202-1 DEFINITIONS.
- I.4 52.203-3 GRATUITIES. (APR 1984)
- I.5 52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)
- I.6 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
- I.7 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)
- I.8 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)
- I.9 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997))
- I.10 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (JUN 2003)
- I.11 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000)
- I.12 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER. (AUG 2000)
- I.13 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
- I.14 952.208-70 PRINTING. (APR 1984)
- I.15 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)
- I.16 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (JUN 1999)
- I.17 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)
- I.18 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA. (OCT 1997)
- I.19 52.215-12 SUBCONTRACTOR COST OR PRICING DATA. (OCT 1997)
- I.20 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS. (JAN 2004)
- I.21 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. (OCT 1997)
- I.22 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS. (OCT 1997)
- I.23 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (MAY 2004) .
- I.24 52.219-14 LIMITATIONS ON SUBCONTRACTING. (DEC 1996)
- I.25 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)
- I.26 52.222-3 CONVICT LABOR. (JUN 2003)
- I.27 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999)
- I.28 52.222-26 EQUAL OPPORTUNITY. (APR 2002)
- I.29 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (DEC 2001)
- I.30 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (JUN 1998)
- I.31 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (DEC 2001)
- I.32 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)
- I.33 52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (JUN 2003)
- I.34 952.224-70 PAPERWORK REDUCTION ACT. (APR 1984)
- I.35 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JAN 2004) .
- I.36 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

- I.37 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (AUG 1996)
- I.38 52.227-14 RIGHTS IN DATA - GENERAL. (JUN 1987) WITH ALTERNATE V (JUN 1987) AS AMENDED BY DEAR 927.409 JAN 1999)
- I.39 52.227-14 RIGHTS IN DATA GENERAL. (JUN 1987) ALTERNATE II (JUN 1987)
- I.40 52.228-7 INSURANCE - LIABILITY TO THIRD PERSONS. (MAR 1996)
- I.41 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)
- I.42 52.232-17 INTEREST. (JUN 1996)
- I.43 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)
- I.44 52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)
- I.45 52.232-25 PROMPT PAYMENT. (FEB 2002) -- ALTERNATE I (FEB 2002)
- I.46 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION. (OCT 2003)
- I.47 52.233-1 DISPUTES. (JUL 2002) - ALTERNATE I (DEC 1991)
- I.48 952.235-70 KEY PERSONNEL. (APR 1994)
- I.49 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME (OCT 1997)
- I.50 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984)
- I.51 52.242-13 BANKRUPTCY. (JUL 1995)
- I.52 52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (MAY 2001)
- I.53 52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)
- I.54 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (JUL 2004) .
- I.55 52.245-1 PROPERTY RECORDS (APR 1984)
- I.56 52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)
- I.57 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (JUN 2003)
- I.58 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS. (APR 2003)
- I.59 952.247-70 FOREIGN TRAVEL (MARCH 2000)
- I.60 52.248-1 VALUE ENGINEERING (FEB 2000) .
- I.61 52.249-14 EXCUSABLE DELAYS. (APR 1984)
- I.62 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (DEC 2000)
- I.63 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)

- I.64 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUN 1997)

ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product. (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of two years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in

this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

I.65 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than [TBD] *[insert dollar figure or quantity]*, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor --

(1) Any order for a single item in excess of [TBD] *[insert dollar figure or quantity]*;

(2) Any order for a combination of items in excess of [TBD] *[insert dollar figure or quantity]*;
or

(3) A series of orders from the same ordering office within [TBD] days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within two days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

I.66 52.216-22 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after more than six (6) months after contract completion date.

I.67 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUN 2003)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.*

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

I.68 52.222-2 PAYMENT FOR OVERTIME PREMIUMS. (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed **zero** or the overtime premium is paid for work -

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall -

(1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

I.69 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL). JUN 1987

Except for data contained on pages [TBD], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in

the proposal dated [TBD], upon which this contract is based.

I.70 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR. (APR 1984)

Funds are not presently available for performance under this contract beyond the end of the fiscal year. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond the end of the fiscal year, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

I.71 52.244-2 SUBCONTRACTS. (AUG 1998) - ALTERNATE II AUG 1998

(a) *Definitions.* As used in this clause -

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that -

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds -

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: [TBD]

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting -

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [TBD]

I.72 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

THE FOLLOWING CLAUSES PERTAIN ONLY TO COST-REIMBURSEMENT TASK ORDERS ISSUED AGAINST THIS CONTRACT. THESE ARE IN ADDITION TO ALL CLAUSES LISTED ABOVE IDENTIFIED TO PERTAIN TO ALL TYPES OF TASK ORDERS.

I.73 52.216-7 ALLOWABLE COST AND PAYMENT. (DEC 2002)

(a) *Invoicing.* (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only -

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made -

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless -

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only,

may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates -

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be -

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver -

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except -

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

I.74 52.216-8 FIXED FEE MAR 1997

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

I.75 52.232-20 LIMITATION OF COST. APR 1984

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that -

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

I.76 52.232-22 LIMITATION OF FUNDS. APR 1984

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the

Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of -

(i) The amount then allotted to the contract by the Government or;

(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of -

(1) The amount previously allotted by the Government or;

(2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

I.77 52.233-3 PROTEST AFTER AWARD. (AUG 1996) - ALTERNATE I JUN 1985

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or

33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.78 52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (MAY 2001)

(a) *Definition.* "Proposal," as used in this clause, means either -

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which -

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to -

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed -

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

I.79 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS. (JAN 1997)

(a) The Contractor shall -

- (1) Certify any proposal to establish or modify final indirect cost rates;
- (2) Use the format in paragraph (c) of this clause to certify; and
- (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and
2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

I.80 52.243-2 CHANGES - COST-REIMBURSEMENT. (AUG 1987) - ALTERNATE II (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the -

- (1) Estimated cost, delivery or completion schedule, or both;
- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

I.81 52.245-5 GOVERNMENT PROPERTY (APPLIES TO COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS ONLY). (MAY 2004)

a) Government-furnished property.

(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice,

(i) decrease the Government-furnished property provided or to be provided under this contract or

(ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract.

The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any --

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.*

(1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon --

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.*

(1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss.*

(1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage) --

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3)

(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the

Contractor can establish by clear and convincing evidence that such loss, destruction, or damage --

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of --

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for --

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Government property disposal.* Except as provided in paragraphs (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) *Scrap.*

(i) *Contractor with an approved scrap procedure.*

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap form other than production or testing, the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--

- (1) Requires demilitarization;
- (2) Is a classified item;
- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Pre-disposal requirements.* When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:

(i) May purchase the property at the acquisition cost.

(ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.*

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of that contract; and

(B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--

(A) Special test equipment with commercial components;

(B) Special test equipment that does not contain commercial components;

(C) Printing equipment;

(D) Computers, components thereof, peripheral equipment, and related equipment;

(E) Precious Metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment in sufficient detail to permit an understanding of the special test equipment's intended use.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;

(ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.

(6) *Postsubmission adjustments.* The Contractor shall provide the Plant Clearance Officer as least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(7) *Storage.*

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule, might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility must be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.

(8) *Disposition instruction.*

(i) If the government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the

Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Government property to the cost of work covered by this contract, or to the Government as directed by the Contracting Officer.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) *Abandonment of Government property.*

(1) The Government will not abandon sensitive Government property without the Contractor's written consent;

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.82 952.245-5 GOVERNMENT PROPERTY (APPLIES TO COST REIMBURSEMENT, TIME-AND-MATERIALS, OR LABOR-HOUR CONTRACTS ONLY)

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

I.83 52.249-6 TERMINATION (COST-REIMBURSEMENT). (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and
 - (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The

Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee

THE FOLLOWING CLAUSES PERTAIN ONLY TO FIXED-PRICE TASK ORDERS ISSUED AGAINST THIS CONTRACT. THESE ARE IN ADDITION TO ALL CLAUSES LISTED ABOVE IDENTIFIED TO PERTAIN TO ALL TYPES OF TASK ORDERS.

I.84 52.232-1 PAYMENTS (APR. 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if --

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

I.85 52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (FEB 2002)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

I.86 52.232-11 EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

I.87 52.233-3 PROTEST AFTER AWARD. (AUG 1996) -

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.88 52.243-1 CHANGES -- FIXED PRICE (AUG. 1987) ALTERNATE I (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**I.89 52.245-2 GOVERNMENT PROPERTY (APPLIES TO FIXED-PRICE TASK ORDERS ONLY).
(MAY 2004)**

(a) *Government-furnished property.*

(1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice,

(i) decrease the Government-furnished property provided or to be provided under this contract, or

(ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract.

The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any --

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property.

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract --

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon --

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.*

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for --

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Government property disposal.* Except as provided in paragraph (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) *Scrap (to which the Government has obtained title under paragraph (c) of this clause).*--

(i) *Contractor with an approved scrap procedure.*--

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--

- (1) Requires demilitarization;
- (2) Is a classified item;
- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals; or
- (6) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Pre-disposal requirements.* When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:

- (i) May purchase the property at the acquisition cost.
- (ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable a reasonable restocking fee that is consistent with the supplier's customary practices)
- (iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.*--

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another

Government contract do not require the Government to furnish that property for performance of that contract; and

(B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Computers, components thereof, peripheral equipment, and related equipment;

(E) Precious Metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment in sufficient detail to permit an understanding of the special test equipment's intended use.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;

(ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.

(6) *Postsubmission adjustments.* The Contractor shall provide the Plant Clearance Officer at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(7) *Storage.--*

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.

(8) Disposition instructions.--

(i) If the Government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) Disposal proceeds. The Contractor shall credit the net proceeds from the disposal of Government property to the price or cost of work covered by this contract or to the Government as the Contracting Officer directs.

(10) Subcontractor inventory disposal schedules. The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) Abandonment of Government property.--

(1) The Government will not abandon sensitive Government property without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.90 952.245-2 GOVERNMENT PROPERTY (APPLIES TO FIXED-PRICE CONTRACTS ONLY)

Modify FAR 52.245-2 by adding "and the DOE Acquisition Regulation Subpart 945.5," after the reference to FAR Subpart 45.5 in the first sentence of paragraphs (e)(1) and (e)(2) of the clause.

I.91 52.249-2 -- TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (MAY 2004)

a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government --
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by

- (1) the amount of payments previously made and
- (2) the contract price of work not terminated.

The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

- (1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

- (2) The total of --

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date

the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

I.92 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a)

(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to --

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the

Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any

(1) completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract.

Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

SECTION J - LIST OF ATTACHMENTS

J.1 LIST OF ATTACHMENTS (MAR 1999)

ATTACHMENT	DESCRIPTION	PAGES
A	Statement of Work	69-77
B	Reporting Requirements	78-85
C	Cost Exhibits	86 - Separate File
D	List of Government Property/Contractor Acquired	87
E	Cost Management Report Example	88

J.2 ATTACHMENT A - STATEMENT OF WORK**Energy Star, Codes and Standards and Building Technologies Support Services
Statement of Work**

The following format has been used for this statement of work.

- 1.0 Introduction
 - 1.1 Background
 - 1.2 Mission
 - 1.3 Program and Support Areas
 - 1.3.1 Weatherization and Intergovernmental Program
 - 1.3.1.1 Energy Star
 - 1.3.2 Building Technologies Program
 - Equipment Standards and Analysis
- 2.0 Scope
 - 2.1 Types of Services
 - 2.2 Resources
- 3.0 Service Areas
 - 3.1 Energy Star
 - 3.2 Codes and Standards
- 4.0 Glossary

1.0 INTRODUCTION**1.1 Background**

The Office of Energy Efficiency and Renewable Energy (EERE) leads the Federal Government's research, development, and deployment (RD&D) efforts to provide reliable, affordable, and environmentally sound energy for America's future. As a Federal office, EERE's role is to invest in high-risk, high-value research and development that is both critical to the Nation's energy future and would not be sufficiently conducted by the private sector acting on its own. EERE also works with stakeholders to develop programs and policies to facilitate the deployment of advanced clean energy technologies and practices.

1.2 Mission

The EERE mission is to strengthen America's energy security, environmental quality, and economic vitality in public-private partnerships that: enhance energy efficiency and productivity; bring clean, reliable and affordable energy technologies to the marketplace; and make a difference in the everyday lives of Americans by enhancing their energy choices and their quality of life.

Two key components of the EERE portfolio are co-sponsorship of the Energy Star Program and development of Equipment Standards and Analysis. These activities, explained in additional detail below, are major contributors to EERE's energy efficiency mission.

Additional information can be found at <http://www.eere.energy.gov>

1.3 Program and Support Areas

EERE's mission is accomplished through the efforts of eleven (11) technology programs: Biomass, Building Technologies, Distributed Energy, Federal Energy Management, FreedomCAR and Vehicle Technologies, Geothermal Technologies, Hydrogen, Fuel Cells and Infrastructure Technologies, Industrial Technologies, Solar Energy Technology, Weatherization & Intergovernmental Programs, Wind & Hydropower Technologies. This requirement is supported by two (2) of these programs: Weatherization and Intergovernmental and Building Technologies (BT).

1.3.1 Weatherization and Intergovernmental

The Weatherization and Intergovernmental Program works with communities, businesses, manufacturers, and consumers to facilitate the adoption of energy-efficient technologies and policies. This program manages the Energy Star activities.

The Energy Star Program develops technical requirements and qualifications defining ENERGY STAR status by promoting the use and manufacturing of ENERGY STAR products. This is done by working with manufacturers, retailers, utilities, and businesses.

1.3.1.1 Energy Star

ENERGY STAR is a voluntary labeling program sponsored by the U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA). The ENERGY STAR label helps businesses and consumers easily identify highly efficient products, homes, and buildings that save energy and money, while protecting the environment.

In addition to lowering energy bills and reducing the pollution from power generation, ENERGY STAR helps meet America's energy needs and strengthen the U.S. economy.

In 2001 alone, ENERGY STAR saved 80 billion kilowatt hours and more than 10,000 megawatts of peak power—enough to power 10 million homes in the United States for one year. The cumulative energy savings of all ENERGY STAR qualified appliances sold to date could light all the homes in Washington, DC, for 40 years.

ENERGY STAR works with manufacturers, national and regional retailers, state and local governments, and more than 100 utilities that serve about half of U.S. households. These partners help the government establish energy efficiency criteria, label products, and promote the manufacture and use of ENERGY STAR products.

1.3.2 Building Technologies (BT) Program

The Building Technologies (BT) Program, in partnership with industry and government, develops, promotes, and integrates energy technologies and practices to make buildings more efficient and affordable and communities more livable. Accomplishing this mission through a variety of innovative programs that leverage non-Federal resources and expertise will save tens of billions of dollars, create new jobs, and lower the emissions of air pollutants, including greenhouse gases. This program manages the Equipment Standards and Analysis activities.

The Equipment Standards and Analysis program works with other government agencies, state and local jurisdictions, manufacturers, trade associations, energy conservation advocate groups, utilities and other stakeholders to develop minimum energy efficiency standards that are technologically feasible and economically justified.

1.3.2.1 Equipment Standards and Analysis

The U.S. Department of Energy's Equipment Standards and Analysis Program develops test procedures and minimum efficiency standards for residential appliances and commercial equipment.

Even though the typical operating cost of an appliance may be several times greater than its initial purchase price, many consumers do not consider energy efficiency when making their purchases. And, manufacturers have been reluctant to invest in more efficient technology that may not be accepted in the highly competitive marketplace - even though most products can be produced to be significantly more energy efficient.

Federal laws including the Energy Policy and Conservation Act (EPCA) and the Energy Policy Act (EPAct) now require the Department of Energy, through its Equipment Standards and Analysis Program, to test and maintain these federal standards to keep a consistent, national energy efficiency requirement for appliances and equipment. DOE's program carries out activities in three areas: test procedures, labeling, and mandatory energy conservation standards.

The Energy Policy and Conservation Act of 1975 (EPCA) established an energy conservation program for major household appliances. In 1992, the Energy Policy Act (EPAct) expanded the coverage of EPCA and to establish maximum water flow rate requirements for certain plumbing products. EPAct also provided for voluntary testing and consumer information programs for office equipment, luminaries, and windows. Congress set initial federal energy efficiency standards and established schedules for DOE to review these standards. DOE is required to publish energy efficiency standards that are strict enough to maximize energy efficiency, technically feasible, and economically justified.

As part of this process, DOE prescribes test procedures that measure the energy efficiency and energy use and provide an estimate of annual operation cost of each appliance. The Federal Trade Commission (FTC) is required to prescribe labeling rules for the residential appliances. DOE and FTC share responsibility for labeling of the commercial equipment.

DOE actively encourages the participation and interaction of all interested parties at all stages of the rulemaking process as described in detail in an Interpretive Rule published in the Federal Register (July 15, 1996, 61FR13973). Early and frequent interactions among manufacturers, efficiency/environmental advocates, states, utilities, retailers and consumers provide a balanced discussion on potential standards levels as well as critical information required to conduct the analysis.

2.0 Scope of Work

2.1 Types of Services

The Contractor shall perform a broad spectrum of technical and management support for the timely and effective execution of EERE's energy program(s) responsibilities. The types of services include, but are not limited to, the following:

- consumer education
- baseline studies
- technology assessment
- scientific and engineering evaluation
- program design
- strategic assessment
- engineering economics and market assessment
- peer review and evaluation support

2.2 Resources

2.2.1 Contract Furnished Resources

The Contractor shall furnish all personnel, facilities, equipment, travel, materials, and supplies necessary to perform the work under this contract, except for that specifically identified as being provided by the Government in Section 2.2.2.

2.2.2. Government Furnished Resources

The Government will only furnish resources for accomplishment of the work under this contract in accordance with Section H.4 of this contract and identified in Section J, Attachment D entitled List of Government Property – Contractor Acquired.

3.0 Service Areas

The Contractor may be required to perform any or all of the following tasks grouped by service area.

3.1 Service Area - Energy Star Program

3.1.1 Sub-Service Area - Program Design

The Contractor shall implement and maintain consumer education and labeling campaigns for existing building products that meet the Energy Star criteria and design and implement programs for adding new appliances or products that meet the criteria to the Energy Star portfolio. The Contractor shall update existing promotional, labeling and consumer education programs for current Energy Star products.

The Contractor shall design and implement other Programs to accelerate the introduction of new technologies, such as volume purchase programs, demonstration programs and Federal procurement programs. The Contractor shall design and implement programs that involve homebuilders and remodeling contractors to market combinations of energy efficient products or whole building systems.

The Contractor shall perform supporting activities in product selection, development of performance level standards and coordinate marketing system

3.1.2 Sub-Service Area – Partner Liaison

The Contractor shall maintain existing relationships with retailer manufacturer and utility partners. The Contractor shall actively recruit new partners to assist the Government in promoting the Energy Star portfolio of products and educating consumers on the benefits of purchasing efficient appliances and building products. The partnerships shall include, as a minimum, Retailers; Utilities, State and Local Governments, Market Transformation Groups; Manufacturers; and Homebuilders and Remodeling Contractors.

3.1.3 Sub-Service Area - Consumer Education

The Contractor shall work to encourage the dissemination of point-of-sale consumer education on Energy Star qualified products by manufacturers, retailers, utilities, state and local governments and other market transformation groups. The Contractor shall maintain an Energy Star homepage on the internet, participate in a national brand awareness campaign for Energy Star and develop sales training curricula for retail sales staff. The Contractor shall support the development and distribution of in-store brochures.

3.1.4 Sub-Service Area - Metrics and Evaluation

The Contractor shall collect and analyze sales data on Energy Star Products. The Contractor shall provide reports of the masked sales data to DOE and other partners in the Energy Star program for review. Where applicable, the Contractor shall provide recommendations for increasing Energy Star Products sales.

3.1.5 Sub-Service Area - Program Management

The Contractor shall develop and maintain a interface network for the other Federal and/or contractor representatives to ensure proper coordination with the DOE. The Contractor shall coordinate and perform necessary Energy Star related travel, provide for printing and copying, procure equipment for the successful completion of all Energy Star tasks. The Contractor shall provide technical analysis in support of the Energy Star and related programs

3.2 Equipment Standards and Analysis Program

The Contractor shall assist DOE in evaluating technologies, comparing alternative programs, projects, and activities and assessing potential future directions by providing a solid foundation of unbiased scientific, engineering, environmental, and economic and market assessments. The Contractor shall support research, development, demonstration, and standards (RDD&S) rule-making activities. As directed by the Government, the contractor shall perform assignments in each of the following general areas of interest:

- **Impact Analysis Methodology**
 - The contractor shall use federal efficiency standards analytical framework, analysis tools and interrelations of the various analyses to perform impact analysis studies.
 - The contractor shall implement the federal efficiency standards analytical approach for estimating the impact of proposed appliance efficiency standards on manufacturers.
 - The contractor shall use best practices when designing federal efficiency standards analytical frameworks. This includes, but is not limited to, generating consensus on the proposed frameworks among stakeholders through public draft reports, workshops, meetings and presentations.
- **Industry Knowledge**
 - The contractor shall develop and maintain knowledge of a wide variety of relevant industries' present and past structure, market trends, consolidations, new competitors, and market drivers in order to make informed recommendations regarding Equipment Standards and Analysis work.
 - The contractor shall maintain technical specifications of regulated products and awareness of specific customer requirements, within the industries present and past structures, market trends, consolidations, new competitors, and market drivers. In addition, the contractor shall separate efficiency and non-efficiency related features.
 - The contractor shall develop data collection instruments such as interview guides and conduct manufacturer interviews in regulatory context to gain industry knowledge.

- The contractor shall develop and maintain knowledge of the Department of Justice (DOJ) analytical process, relative to the Equipment Standards and Analysis work, to assess changes in competitive environment.
- The contractor shall assess changes in the competitive environment, relative to the Equipment Standards and Analysis work, by gaining expertise in the Department of Justice (DOJ) analytical process. OR The contractor shall assess changes in the competitive environment within the DOJ analytical process.
- **Financial Modeling Capability**
 - The contractor shall conduct financial and economic analyses for regulatory proceedings.
 - The contractor shall perform financial modeling using the Government Regulatory Impact Model (GRIM) tool for regulatory proceedings.
 - The contractor shall develop estimates on capital investments, design and marketing expenses required to build new products mandated by regulations.
- **Manufacturing Cost Estimation Capability**
 - The contractor shall develop technology assessments and perform screening analysis based on practicability to manufacture, install and service, product utility, product availability, and impacts on help and safety.
 - The contractor shall assess the efficiency improvement of various designs and develop cost-efficiency relationships for the regulated products.
 - The contractor shall develop and maintain knowledge of typical manufacturing processes used by regulated manufacturers and of necessary manufacturing process changes as a result of new standards. This dynamic knowledge base is necessary in order to make informed recommendations regarding Equipment Standards and Analysis work.
 - The contractor shall make informed recommendations regarding Equipment Standards and Analysis work by developing and maintaining knowledge of typical manufacturing processes used by regulated manufacturers and of necessary manufacturing process changes as a result of new standards.
 - The contractor shall perform reverse engineering cost modeling of prototype designs and of products in large diversified markets.
- **Communications and Project Management**
 - The contractor shall maintain an active network of industry contacts and relationships with industry organizations and manufacturers of products impacted by federal standards.
 - The contractor shall develop and maintain credibility among key groups of stakeholders through prior contact, experience and successful consensus building efforts.
- **Rulemaking**
 - The contractor shall prepare rulemaking notices for Federal Register publication.
 - The contractor shall prepare draft regulatory language relating federal or state efficiency standards.
 - The contractor shall develop and maintain knowledge of Federal legislation for efficiency standards and of the Administrative Procedures Act.
- **Crosscutting Analysis**
 - The contractor shall prepare reports evaluating technologies, comparing alternative programs, projects, and activities.
 - The contractor shall prepare reports evaluating the interaction between research, development, demonstration, and standards (RDD&S) activities.
 - The contractor shall prepare reports evaluating the energy performance of regulated appliances and equipment.

3.2.1 Sub-Service Area - Scientific and Engineering Evaluations

3.2.1.1 Task Area - Basic Studies

The Contractor shall carry out studies of basic materials and physical phenomena underlying thermal energy transfer and energy conversion processes. The Contractor shall perform in-depth technical analyses of energy transfer and conversion processes and components to identify fundamental energy loss mechanisms, opportunities for energy efficiency increases, and research and development needs. The Contractor shall carry out studies through review of scientific and technical literature, analysis using basic physical principles, and/or laboratory experimental effort.

3.2.1.2 Task Area - Applied Technical Evaluations

The Contractor shall evaluate a wide variety of energy conversion systems and concepts to establish the viability and performance potential of the concepts in comparison to competing technical approaches. The approaches considered can include but are not necessarily limited to those under current development by DOE and other programs, those identified from the literature, and new concepts formulated especially for the assessment. These evaluations will consider both fundamental conversion processes and hardware design approaches and can include a wide variety of considerations including but not necessarily limited to energy performance potential, installed costs, maintenance and operating costs, manufacturing considerations, reliability, and safety. The evaluations can include but are not necessarily limited to testing, experimental work to obtain required performance data, and limited prototype development to demonstrate proof-of-principle of advanced end-use technologies.

3.2.1.3 Task Area – Field Tests and Evaluations

The Contractor shall conduct field evaluations of advanced technologies under actual operating conditions to determine energy and service performance and to identify problems. The Contractor shall identify appropriate operating scenarios, building sectors, climate regions, and the location and number of sites for the field demonstration. The Contractor shall develop test methodologies, data collection procedures, and define evaluation parameters which fully characterize the performance of the technologies. The Contractor shall perform real-time data collection and complete engineering analysis of results.

3.2.2 Sub-Service Area - Baseline Studies and Strategic Assessments**3.2.2.1 Task Area – Energy Demographics**

The Contractor shall determine how energy is used in buildings by estimating the baseline energy consumption of the in-place stock of equipment and buildings for a particular technology group or market segment. The Contractor shall conduct laboratory or field measurements to verify energy consumption of current equipment and buildings. The Contractor shall benchmark estimates with EIA building surveys and other sources.

3.2.2.2 Task Area - Opportunity Assessments

The Contractor shall assist DOE in establishing viable energy performance objectives for RDD&S programs and the relative priority of the various activities, which could be considered in formulating RDD&S programs. The Contractor shall base performance objectives and priorities on quantitative evaluation of the energy savings opportunities associated with new equipment, envelope, and system technologies.

3.2.2.3 Task Area - Technology Reviews

The Contractor shall conduct broad, sector-wide reviews of technology status and development trends. These studies may include but are not necessarily limited to the historical technical background, maturity of the technology, status of R&D, leading centers of excellence, major technical hurdles, and international developments in addition to a thorough technical review and assessment. These reviews are intended to provide technical background for R&D planning and private sector liaison, particularly in technology sectors not previously addressed in the DOE program.

3.2.3 Sub Service Area – Technology Assessments**3.2.3.1 Task Area – Energy Analysis Tools**

The Contractor shall develop methodologies to predict the technical and economic performance of building equipment and envelope technologies. The Contractor shall define prototypical buildings representative of the existing commercial and residential building stock. The Contractor shall develop data bases on equipment and envelope cost and performance to support energy impact assessments. The Contractor should employ algorithms

and analysis techniques widely accepted within the engineering community. Any computer models developed by the Contractor should be structured to facilitate updating data files and adding new technologies. The Contractor should develop the models on a software environment which is user friendly and well documented. The models developed by the Contractor should be compatible with standardized building energy analysis software, such as Energy-Plus.

3.2.3.2 Task Area - Utility Impact Analyses

The Contractor shall assess the impact of advanced end-use technologies and new minimum efficiency standards on utilities. Advanced technologies include but are not necessarily limited to efficiency improving technologies, load leveling/load shifting technologies, and on-site power generation or fuel switching technologies. The Contractor shall develop methodologies for analyzing marginal energy use, costs and emissions, impacts on power generation, transmission, and distribution at the regional and national levels. The Contractor shall identify end-use equipment that has favorable impacts on utilities and would be candidate for utility or state promotion programs. The Contractor shall develop program plans, marketing strategies, and monitoring approaches and quantify utility benefits.

3.2.3.3 Task Area - Environmental, Health, Safety, and Institutional Assessments

The Contractor shall identify potential environmental, health, and safety (EH&S) impacts of building systems, components, equipment, and services by analytical and experimental means. The Contractor shall evaluate alternative technologies which mitigate adverse impacts. The Contractor shall assess the impact of pending EH&S legislation and initiatives and identify potential legal and institutional barriers to the adoption of specific new technologies. The Contractor shall analyze the impact of programmatic initiatives (including but not necessarily limited to building energy performance standards and equipment minimum efficiency standards) on EH&S. The Contractor shall formulate R&D needs, alternative design approaches, and economic and market consequences of mitigating identified EH&S impacts.

3.2.4 Sub Service Area – Engineering-economics and Market Assessments

3.2.4.1 Task Area - Cost Estimations and Value Engineering

The Contractor shall estimate the manufacturing cost for specific or generic components and products, with level of detail of estimates ranging from part-by-part material and labor cost estimates for an assembly to more generalized derived cost estimates based on extrapolations from similar products. The Contractor shall conduct value engineering studies and manufacturability evaluations to determine product feasibility and to support least cost design evolution. The Contractor shall estimate manufacturing facility capital requirements. The Contractor shall conduct engineering and life-cycle cost analyses to support rule-makings for appliance standards.

3.2.4.2 Task Area - Energy Economics, Market, and Venture Analyses

The Contractor shall conduct competitive economic analyses to determine the energy performance and owning and operating costs for a wide range of conditions and technologies. The Contractor shall conduct comparative economic studies to determine potential market penetration of new products or processes for the purpose of RDD&S project appraisal. The Contractor shall conduct manufacturer impact analysis and consumer impact analysis to support rule-makings. The Contractor shall quantitatively determine the viability of new business ventures based on specific DOE-developed technologies, analyzing several types of firms and various investment, cost, and market scenarios. The Contractor shall identify the implications of the results to the direction of DOE's RDD&S program and to the formulation of technology transfer approaches. The Contractor shall develop any needed methodologies and data bases to support economic, market, and venture analyses.

3.2.4.3 Task Area - Market Infrastructure and Commercialization Analyses

The Contractor shall develop market profiles for end-use equipment sectors and envelope technologies including but not necessarily limited to the current market infrastructure (manufacturers, distributors, and purchasers), the market history and past trends, and existing cost structures. The Contractor shall identify decision makers and related influences within the distribution channel(s). The Company shall determine obstacles (and solutions) to the introduction of advanced technology including but not necessarily limited to technical and non-technical options such as resolution of market barriers by regulations, subsidies, consumer education, product promotional campaigns, field demonstrations, etc. The Contractor shall identify methods to achieve widespread commercialization of energy efficient end-use equipment.

3.2.5 Sub Service Area – Peer Review and Evaluation

The Contractor shall conduct in-depth technical reviews and evaluations of completed, on-going, or proposed research in the DOE program; evaluation criteria may include but is not necessarily limited to technical quality, mission relevance, impact, and productivity. The Contractor shall carry out these reviews by using recognized experts in the field using a sound scientific basis and will conduct the reviews in an unbiased manner to provide credibility and utility of the results and recommendations. These reviews may be directed toward a specific report, a project effort, or an entire program and may be carried out by individual reviews or by consensus processes.

4.0 Glossary

<u>Acronyms</u>	<u>Definition</u>
BT	Building Technologies Program
DOE	Department of Energy
EERE	Office of Energy Efficiency and Renewable Energy
EPA	Environmental Protection Agency
EPAct	Energy Policy Act
EPCA	Energy Policy and Conservation Act
ES&H	Environmental, Safety, and Health
FTC	Federal Trade Commission
R&D	Research and Development
RDD&S	Research, Development, Demonstration, and Standards

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(Previous Editions Obsolete)

**J.3 ATTACHMENT B - REPORTING REQUIREMENTS CHECKLIST
(JULY 1999)**

REPORTING REQUIREMENTS CHECKLIST

1. Awardee: TBD	2. Identification Number: TBD																																																																																																																																																																																				
3. Report Submission Address: Reports shall be submitted to the electronic and mailing addresses indicated on the NETL-identified Distribution List which will be provided in the post award debriefing.																																																																																																																																																																																					
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GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS (MAR 1999)

The Contractor shall prepare and submit the plans and reports indicated on the "Reporting Requirements Checklist" to the electronic addresses and mailing addresses provided in the NETL-identified Distribution List. The Distribution List will be provided at the post award debriefing with the Contractor. The level of detail the Contractor provides in the plans and reports shall be commensurate with the scope and complexity of the effort and shall be as delineated in the guidelines and instructions contained herein. The prime Contractor shall be responsible for acquiring data from any subcontractors to ensure that data submitted are compatible with the data elements which prime Contractors are required to submit to DOE.

STATUS REPORT (MAR 1999)

The Status Report is the contractor's project manager brief narrative assessment (by Work Breakdown Status - WBS) of the work actually performed and the overall status of the various tasks.

The Status Report provides a concise narrative assessment of the status of the work being performed under the contractual agreement. DOE management uses the report to monitor status and to provide early recognition of potential problem areas. The report highlights changes to objectives, changes to technical approach, relationship to previously planned activities, task variances from baselines in excess of stipulated thresholds by WBS reporting element, causative factors, and actions taken or proposed to resolve them, list of presentations and publications, as well as factors with potential for causing significant variances in the future. Task progress of major accomplishments for each task in bullet form may also be highlighted. The report identifies open items requiring action by DOE or the contractor. The report also provides a summary assessment of the current situation, including forecast of the near future and the expected impact on project accomplishment.

MILESTONE SCHEDULE/PLAN (DOE F 1332.3) (MAR 1999)

The Milestone Schedule Plan documents the planned or baseline project schedule in the standard DOE format (DOE F 1332.3). It includes a summary sheet showing all tasks/elements identified in the Work Breakdown Structure on a single form, and, for complex efforts, a separate sheet for each task/element which gives more detail. The planned events and milestones for each task/element are included. The standard symbols and charting conventions described on the reverse side of the form are used. The summary sheet includes a line labeled "administration," and denotes events such as subcontract awards, project reviews, etc. An associated milestone log (DOE F 4600.3A) provides a narrative description of events and anticipated dates of initiation/completion.

LABOR PLAN (DOE F 1332.4) (MAR 1999)

The Labor Plan establishes the planned utilization of labor for the term of the contract necessary to complete the planned work. For projects being managed at the fourth level of the WBS or greater, DOE F 1332.4, Labor Plan, is used. This information must also be reported by WBS element.

COST PLAN (DOE F 1332.7) (MAR 1999)

The Cost Plan establishes the plan for accruing total costs by WBS element for the life of the contractual agreement. The time-phased baseline establishes the basis for the measurement of actual cost accumulation and provides basic information for updating and forecasting budget requirements. The Cost Plan itemizes accrued costs by WBS element for prior fiscal years, the current fiscal year by month, and future fiscal years until completion of the contractual agreement. For projects being managed to the fourth WBS level, additional forms show cost detail for each task individually.

MILESTONE SCHEDULE/STATUS REPORT (DOE F 1332.3) (MAR 1999)

The Milestone Schedule/Status Report is used for reporting schedule status and shows the completion status of the activities and events at the same level of detail as shown on the Milestone Schedule Plan. The report also shows changes to the planned schedule. Like the Milestone Schedule/Plan, information is reported by WBS element. DOE Form 1332.3 is used for reporting schedule status.

LABOR MANAGEMENT REPORT (DOE F 1332.8) (MAR 1999)

This is a periodic report of the status of the labor resources utilization to be compared with the Labor Plan. Labor information is reported by Work Breakdown Structure (WBS) element.

COST MANAGEMENT REPORT (AUG 2003)**PURPOSE**

The Cost Management Report provides a monthly status of actual and estimated costs, funding and plan values, as well as a projection of the funds expiration, for each task within a designated contract. This report serves as an accounting and project management tool. This report will be used by Federal personnel to monitor the funding and cost status of the contract, verify the reasonableness of the Contractor's invoices, formulate budgets and calculate award fee pools.

FORM

A Cost Management Report example has been attached as Attachment E. This is the required format that must be utilized for submission of this report.

After contract award, a Microsoft Excel (.xls) file will be provided.

INSTRUCTIONS

- Item 1. Enter the official contract title.
- Item 2. Enter the inclusive start and completion dates for the reporting period.
- Item 3. Enter the official contract number and, if a modification(s) has occurred, append the latest modification number.
- Item 4. Enter the name and address of the Contractor.
- Item 5. Enter the date of the contract's current cost plan, which serves as a baseline for this report.
- Item 6. Enter the official start date of the original contract.
- Item 7. Enter the official completion date as of the latest modification to the contract.
- Item 8. Enter the task numbers, in numerical order, consistent with the contract's Work Breakdown Structure. Modifications to the task will be tracked by an alpha added to the end of the task with "A" designating the first modification.
- Item 9. Enter the budgeting and reporting (B&R) number(s) that is (are) to fund the task. If more than one B&R number is being used, place the pertinent funding information on separate lines.
- Item 10. Enter the cost code which is made up of a financial plan designation and a NETL cost center. The financial plan code is the first two alphas. The following 5 character alpha numeric is the NETL cost center. If more than one cost code is being used, place the pertinent funding information on separate lines.
- Item 11. Enter the program/order number that designates NETL customer work. If more than one number is being used, place the pertinent funding information on separate lines.
- Item 12. Enter the amount of funds that have been obligated against the task in the current fiscal year.

- Item 13. Enter the total obligations awarded to the contract as of the close of the reporting period.
- Item 14. Enter the Approved FY Cost Plans, an estimate of the cost of work planned in the current fiscal year distributed by funding source. Only plan values authorized by the CO shall be recorded in this column.
- Item 15. Enter the total authorized plan value for the entire performance period of the task, which may span multiple fiscal years.
- Item 16. Enter the total actual cost incurred for the reporting period.
- Item 17. Enter the total planned cost for the reporting period as shown in the most recent authorized task work plan.
- Item 18. Enter the total actual cost incurred as of the close of the reporting period for the current fiscal year.
- Item 19. Enter the balance remaining of the planned cost for the current fiscal year as shown in the latest "Approved FY Cost Plan" (item 14).
- Item 20. Enter total actual cost incurred for the task from the inception of the contract to the end of the reporting period.
- Item 21. Enter the total authorized planned cost for the task from the inception of the contract to the date of the report.
- Item 22. Enter the "Next Period Commitments" defined as the cost to be invoiced to NETL during the next period and amounts incurred by the end of the reporting period but not yet invoiced. This would include subcontractor costs and award fee.
- Item 23. Enter the "FY Total Cost" which is defined as the costs that the Contractor expects to incur during the current fiscal year. This will equate to the, "FY To Date Actuals" plus the balance of the year. A contract project manager's estimate may be used to project the balance of the year and should include those costs which have been incurred but not invoiced to NETL.
- Upon completion of the first award fee period estimates for fee shall be based on the average of historic fee earned, not 100% of available fee.
- Special consideration should be made to estimate subcontract costs when the prime has not received invoices but is aware that work has occurred.
- Item 24. Enter the date on which the funds available to the Contractor for a specific task or activity are expected to be fully costed.
- Item 25. Enter notes that relate to tasks financial status. Modifications received after the closing date of the reporting period but before the due date of the CMR should be included.
- Item 26. Enter the subtotal of all tasks identified as Fossil Energy (FE) work.
- Item 27. Enter the subtotal of all tasks identified as Non FE work.
- Item 28. Enter the total of all costs for each column that can be summed. If multiple pages are used, enter the total only on the final page.
- Item 29. Enter the unit measure for dollar amounts shown (e.g., exact dollars). NETL cost entries are done to the penny. Carry the unit of measure out to decimals (e.g., cents) but format the cell to round so space will be saved. NETL Finance will reformat the appropriate column to two decimals for the purpose of making cost entries.
- Item 30. Enter the signature of the responsible Contractor project manager and the date signed, verifying the validity of the furnished information based upon the project manager's knowledge of the contract's current progress and status.

Item 31. Enter the signature of the Contractor's financial representative and the date signed, verifying the validity of the furnished information based upon the financial representative's knowledge of the contract's current progress and status.

* Any reference to a fiscal year refers to the Federal Government fiscal year, October 1 through September 30 of the following year.

HOT LINE REPORT (MAR 2002)

The "Hot Line" Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; an environmental, safety and health violation; achievement of or failure to achieve an important technical objective; or any requirement for quickly documented direction or redirection. The report shall be submitted by the most rapid means available, usually electronic, and should confirm telephone conversations with DOE representatives. Identification as a "Hot Line Report" serves notice at each link in the delivery chain that expedition in handling is required. Unless otherwise agreed by the parties involved, DOE is expected to take action and respond in a similarly timely manner. The report should include:

1. Contractor's name and address;
2. Contract title and number;
3. Date;
4. Brief statement of problem or event;
5. Anticipated impacts; and
6. Corrective action taken or recommended.

Hot line reports shall document the incidents listed below:

1. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
2. Any significant environmental permit violation is to be reported as soon as possible, but within 24 hours of the discovery of the incident.
3. Other incidents that have the potential for high visibility in the media are to be reported as quickly as possible, but within 24 hours following discovery.
4. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but within 24 hours of the discovery of the failure.
5. Any unplanned event which is anticipated to cause a schedule slippage or cost increase significant to the project is to be reported within 24 hours.
6. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release which is in violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported, but within 24 hours of the discovery of the accident.
8. Any incident which causes a significant process or hazard control system failure, or is indicative of one which may lead to any of the above defined incidents, is to be reported as soon as possible, but within 5 days of discovery.

The requirement to submit Hot Line Reports for the incidents identified in 1, 2, 3, 6, or 7 is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public.

When an incident is reported in accordance with 4, 5, 6, 7, or 8, the contractor shall conduct an investigation of its

cause and make an assessment of the adequacy of resultant action. A written report is required no later than ten (10) calendar days following the incident and shall include an analysis of the pertinent facts regarding the cause, and a schedule of the remedial events and time periods necessary to correct the action.

When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first; if possible, and coordinated with NETL's Office of Public Affairs, the Contracting Officer Representative (COR) and the Contracting Officer.

JOURNAL ARTICLES, CONFERENCE PAPERS AND PROCEEDINGS GENERATED BY A SMALL BUSINESS OR NONPROFIT ORGANIZATION FOR DOE REVIEW (SEPT 2000)

The Contractor shall submit to DOE for review and approval all documents generated by the Contractor, or any subcontractor, which communicate the results of scientific or technical work supported by DOE under this award, whether or not specifically identified in the award, prior to submission for publication, announcement, or presentation. Such documents include journal articles, conference papers and proceedings, etc. Each such document shall be accompanied by a properly completed NETL Form 510.1-5, "Request for Patent Clearance for Release of Contracted Research Documents."

The Contractor shall submit a draft version of the document to the COR prior to the publication, presentation, or announcement. The COR shall review the draft version of the document and notify the Contractor of approval or recommended changes. The final version, along with a completed NETL Form 510.1-5, shall be submitted to the NETL AAD Document Control Coordinator.

The following information shall be provided for conference papers and proceedings, etc.

- Name of conference
- Location of conference (city, state, and country)
- Date of conference (month/day/year)
- Conference sponsor

ENVIRONMENTAL (MAR 2003)

In response, in part, to the requirements of the National Environmental Policy Act of 1969 (NEPA), ISO 14001, and other related environmental statutes, the National Energy Technology Laboratory (NETL) requires the submission of various documents that assess the environmental aspects and projected impacts of all of its proposed actions. These documents may include the following: (1) Hazardous Substance Plan; (2) Hazardous Waste Report; (3) Environmental Compliance Plan; (4) Environmental Monitoring Plan; and (5) Environmental Status Reports; and (6) ISO 14001 forms (if applicable).

The environmental information provided in these documents will enable NETL to fulfill its responsibilities under NEPA (additional information about the requirements of the National Environmental Policy Act can be found in the DOE NEPA Compliance Guide and 40 CFR 1021) and to monitor the proposer's compliance with other environmental regulations. The implementation of any task associated with a proposed action will be dependent upon DOE submitting and acquiring approval of necessary NEPA documentation. Therefore, to minimize the risk of project delays, it is imperative that these reports be submitted in a timely manner.

The information contained herein specifies the basic environmental requirements for this procurement action, but it is not to be interpreted as containing all necessary information for any given project. Likewise, certain aspects of the requirements may not be applicable. Accordingly, the level of information provided should be sufficient for DOE to assess the environmental implications of the proposed action.

HAZARDOUS SUBSTANCE PLAN (MAY 1999)

The Contractor shall submit a Hazardous Substance Plan not later than thirty (30) days after initial contract award. The Plan shall specifically identify each Hazardous Substance (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") anticipated to be purchased, utilized or generated in the performance of this contract.

For each such Hazardous Substance identified, the Plan shall specifically provide the following information:

Description of Substance/Chemical
 EPA Hazardous Waste Number
 EPA Hazard Code
 Anticipated Quantity to be purchased, utilized or generated
 Anticipated Hazardous Waste Transporter
 Anticipated Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)
 Anticipated Treatment Method

HAZARDOUS WASTE REPORT (MAY 1999)

The Contractor shall submit a Hazardous Waste Report at the completion of contract performance. The Report shall specifically identify each Hazardous Waste (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") actually utilized, or generated in the performance of this contract. For each such Hazardous Waste identified, the Report shall specifically provide the following information:

Description of Substance/Chemical
 EPA Hazardous Waste Number
 EPA Hazard Code
 Actual Quantity Disposed
 Actual Hazardous Waste Transporter
 Actual Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)
 Actual Disposal Date
 Actual Treatment Method

The Hazardous Waste Report is intended as a final reconciliation of anticipated versus actual Hazardous Substances purchased, utilized, or generated in the performance of this contract.

PROPERTY REPORTS (JAN 2000)

The NETL Property Handbook entitled "Management of Government Property in the Possession of Contractors," contains forms, instructions, and suggested formats for submission of property reports. This handbook can be found at <http://www.netl.doe.gov/business/index.html>.

REPORT OF TERMINATION OR COMPLETION INVENTORY (SF-1428 AND SF-120) (MAR 1999)

This report submitted on the SF-1428 and SF-120 is due immediately upon completion or termination of the contract. The contractor is required to perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract.

ENERGY STAR PARTNERSHIP AGREEMENT(S)

The contractor shall provide all Partnership Agreements executed during the month. The Energy Star Partnership Agreement(s) defines the requirements for being recognized as a partner in each program area, such as manufacturing, selling, or promoting Energy Star qualified products to consumer or organizations. The Energy Star Partnership Agreement is available at: http://www.energystar.gov/ia/about/join/Sample_PA.pdf.

ENERGY STAR PARTNER REPORTS

The contractor shall submit a list of new partners signed on during the month and a separate cumulative list of partners. These reports shall be submitted in a table with the following headings: Organization Name, Organization Type (manufacturer, retailer), Program (windows, appliances etc.), Date Partner Since.

ENERGY STAR ACTIVITIES REPORT

The contractor shall submit a report that summarizes Energy Star activities on a monthly and annual basis. The monthly report shall include a narrative of monthly activities including reports of meetings with industry groups,

vital statistics, shipping activities (listed), and any other requested information specified in each task order. The annual report shall highlight the goals and objectives achieved for each Energy Star sub-service area during the year.

J.4 ATTACHMENT C – COST EXHIBITS

The Cost Exhibits referenced in Section L, Clause L.16 entitled “Proposal Preparation Instructions – Volume III, Cost Proposal (AUG 2003) are incorporated into this solicitation and are attached as a separate .pdf file (entitled 42256 Attachment C.pdf)

J.5 ATTACHMENT D -- GOVERNMENT PROPERTY/CONTRACTOR ACQUIRED

During the solicitation phase, there is currently no “Government-Furnished Property” or “Contractor Acquired Property” anticipated for this effort.

After contract award, if “Government-Furnished Property” or “Contractor Acquired Property” is determined to be necessary by the Government, a modification will be issued and a list of property will be incorporated into Attachment D and managed in accordance with the Section H.4, clause entitled, “Government Property and Data.”

J.6 ATTACHMENT E – COST MANAGEMENT REPORT EXAMPLENATIONAL ENERGY TECHNOLOGY LABORATORY
COST MANAGEMENT REPORT

*Title								*Reporting Period						* Identification Number: DE-AM-23-04NT50500 Modification #:					
*Participant Name and Address								*Cost Plan Date						* Contract Start Date: 6/1/04					
														* Contract Completion Date: 5/31/09					
8Task #	*Cost Tracking			*Funding		Plan		Accrued Costs						Projections			25Notes		
	9B&R Number	10Fin. PlanCost Center	11Program/ Order #	12Current FY Obligations	13Total Obligations	14Approved FY Cost Plan	15Total Plan Value	Reporting Period		FY to Date		Cumulative to Date		22Next Period Commitments	23FY Total Cost	24Funds Expiration			
								16Actual	17Plan	18Actual	19Bal of P	20Actual	21Plan						
Task Title																			
60123	AN2006000	PEMD122		-	195,000	124,591	206,750	7,896	7,999	73,256	12,688	170,485	182,025	8,100	107,505	09/15/03			
60123	AW0301000	PEMA422		-	95,000	59,188	98,250	3,751	3,801	34,878	15,425	81,010	86,480	3,732	51,072	09/30/03			
60123	AN2006000	PEMA422		55,000	231,290	141,871	235,450	8,991	9,108	81,484	27,428	194,085	207,284	9,582	122,419	09/15/03			
Subtotal				55,000	521,290	325,650	540,450	20,639	20,908	189,618	55,541	445,580	475,789	21,414	280,996				
26Subtotal FE																			
27Subtotal NonFE																			
28Total																			
29 Figures Expressed In: Whole Dollars			30Signature of Participant's Project Manager and Date					31Signature of Participant's Authorized Financial Representative and Date											

* Information provided by the government via contract modification

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS**K.1 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (APR 1991)**

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 -

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.2 52.204-3 TAXPAYER IDENTIFICATION. (OCT 1998)

(a) *Definitions.*

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) *Type of organization.*

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other _____.

(f) *Common parent.*

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name _____

TIN _____

K.3 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS). (MAY 1999)

(a) *Definition.* "Women-owned business concern," as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, *Small Business Program Representations*, of this solicitation.] The offeror represents that it * is a women-owned business concern.

K.4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS. (DEC 2001)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that -

(i) The Offeror and/or any of its Principals -

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.5 52.215-6 PLACE OF PERFORMANCE. (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, [] intends, [] does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street Address, City, State, County, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror or Respondent
--	--

_____	_____
_____	_____

K.6 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS. (MAY 2004) - ALTERNATE I (APR 2002)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 541330.

(2) The small business size standard is \$23M.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents as part of its offer that it [] is, [] is not a small business concern.

(2) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents, for general statistical purposes, that it [] is, [] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents as part of its offer that it [] is, [] is not a women-owned small business concern.

(4) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents as part of its offer that it [] is, [] is not a veteran-owned small business concern.

(5) [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.*] The offeror represents as part of its offer that it [] is, [] is not a service-disabled veteran-owned small business concern.

(6) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents, as part of its offer, that-

(i) It [] is, [] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [] is, [] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

(c) *Definitions.* As used in this provision -

“Service-disabled veteran-owned small business concern” -

(1) Means a small business concern -

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

“Veteran-owned small business concern” means a small business concern -

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern -

(1) That is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall -

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.7 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS. (FEB 1999)

The offeror represents that -

(a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;

(b) It ☐ has, ☐ has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.8 52.222-25 AFFIRMATIVE ACTION COMPLIANCE. (APR 1984)

The offeror represents that -

(a) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K.9 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING. (AUG 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that -

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *[Check each block that is applicable.]*

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

☐ (v) The facility is not located in the United States or its outlying areas.

K.10 52.227-15 REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE. (MAY 1999)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data - General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer

software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data - General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [*offeror check appropriate block*] -

[] None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

[] Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data - General."

K.11 COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS (JUNE 1999)

(a) The Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e. the VETS-100 report required by the Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has [], has not [] submitted the most recent report required by 38 U.S.C. 4212(d).

(b) An Offeror who checks "has not" may not be awarded a contract until the required reports are filed. (31 U.S.C. 1354)

K.12 SIGNATURE/CERTIFICATION (SEPT 2003)

By typing the name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the applicant to the conduct of a project), the offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Typed Name and Title of the Officer or Employee
Responsible for the Offer

Date of Execution

Name and Address of Organization:

Solicitation Number: _____

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS OR QUOTERS**L.1 CONSECUTIVE NUMBERING (JAN 1999)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

L.2 CONTENT OF RESULTING CONTRACT (NOV 2003)

Any contract awarded as a result of this RFP will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Documents, Exhibits and Other Attachments (excluding those attachments including in this RFP relating to submission of proposals). Blank areas appearing in these sections, indicated by "[TBD]" will be completed prior to contract award.

L.3 RESPONSIBLE PROSPECTIVE CONTRACTORS (AUG 2003)

All responsible small business concerns meeting the NAICS 541330 size standard of \$23.0 million (in accordance with DEAR 926.7004), may submit proposals for consideration. The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 apply.

DOE may conduct preaward surveys in accordance with FAR 9.106 and may solicit from available sources, relevant information concerning the offeror's record of past performance, and use such information in making determinations of prospective offeror responsibility.

L.4 GUIDANCE FOR PROSPECTIVE OFFERORS – IMPACT OF TEAMING ARRANGEMENTS ON SMALL BUSINESS STATUS

(a) This procurement has been set aside for small business. In order to ensure that award is made to an eligible small business, prospective Offerors, in consultation with legal counsel, are encouraged to review the Small Business Administration's (SBA) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 C.F.R. § 121). In particular, Offerors proposing a joint venture, subcontracting, or another form of teaming arrangement should review 13 C.F.R. § 121.103, *What is affiliation?*, prior to submitting a proposal.

(b) The SBA is the sole authority for making determinations of small business status for small business programs. Such determinations are binding on the Offeror and on the contracting officer. Accordingly, a finding by the SBA of affiliation between an Offeror and its proposed team member(s) or subcontractor(s) may result in the Offeror being found to be other than a small business and therefore ineligible for contract award.

(c) Business concerns are considered to be affiliates of each other if either one directly or indirectly controls or has the power to control the other, or if another concern controls both. In determining whether affiliation exists, factors such as common ownership, common management, and contractual relationships are considered. An Offeror will also be found to be affiliated with its subcontractor(s) if the Offeror is unusually reliant upon its subcontractors or if the subcontractor(s) will perform primary and vital requirements of a contract.

(d) The SBA has issued extensive decisions concerning its evaluation of affiliation of an Offeror and its proposed subcontractor(s). The following examples set forth characteristics that the SBA has reviewed in considering the question of affiliation and may assist prospective Offerors in developing any teaming arrangements and their proposals.

(1) The SBA considers whether proposed subcontracting, partnership, joint venture, or other teaming arrangements contain discrete descriptions of the tasks or work to be performed by each party. The SBA considers whether the Offeror or, if the Offeror is a joint venture or partnership, the joint venture participants or partners, perform the primary or vital portions of the Statement of Work. The

SBA considers whether teaming arrangements clearly set forth the relationship between the parties, as well as the individual roles and responsibilities assigned.

(2) The SBA considers whether there is a clear separation of facilities, employees, and management (decision-making authority) between the Offeror and any entities with which it has teaming arrangements.

(3) The SBA considers the extent to which the Offeror directly employs Key Personnel (Program Manager, Project Manager, etc.).

(4) If the Offeror is an eligible small business prime contractor, the SBA considers whether the majority of the technical expertise resides with the Offeror. If the Offeror is an eligible joint venture (see 13 CFR 121.103(f)(3)), the SBA considers whether the majority of the technical expertise resides among the joint venture members.

(5) The SBA considers the Offeror's profit sharing arrangements with its proposed subcontractor or other entities.

(6) In reviewing affiliation between the Offeror and its proposed subcontractors or entities with which the Offeror has a teaming arrangement, SBA considers the previous contractual or business relationships between the Offeror and that entity.

L.5 52.216-1 TYPE OF CONTRACT. (APR 1984)

The Government contemplates award of an IDIQ Task Order contract resulting from this solicitation. It is anticipated that Cost Plus Fixed Fee Task Orders will be the primary type of Task Order(s) utilized in performance of the requirements. The contract also allows for placement of Firm-Fixed Price Task Orders.

L.6 NUMBER OF AWARDS (NOV 1997)

It is anticipated that there will be one (1) award resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

L.7 52.215-1 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION. (JAN 2004)

(a) *Definitions.* As used in this provision -

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

“In writing, writing, or written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time,” if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show -

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and -

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other

documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall -

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of - or in connection with - the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this

solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

- (2) The Government may reject any or all proposals if such action is in the Government's interest.
- (3) The Government may waive informalities and minor irregularities in proposals received.
- (4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.
- (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
- (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:
 - (i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
 - (ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
 - (iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
 - (iv) A summary of the rationale for award.
 - (v) For acquisitions of commercial items, the make and model of the item to be delivered

by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

L.8 FALSE STATEMENTS (NOV 1997)

Proposals must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

L.9 EXPENSES RELATED TO OFFEROR SUBMISSIONS (FEB 1998)

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

L.10 ALTERNATE PROPOSAL INFORMATION - NONE (NOV 1997)

Alternate proposals are not solicited, are not desired, and shall not be evaluated.

L.11 CLASSIFIED MATERIAL - NONE (NOV 1997)

Performance under the proposed contract is not anticipated to involve access to classified material.

L.12 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER. (OCT 2003)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation ``DUNS'` or ``DUNS+4'` followed by the DUNS number or ``DUNS+4'` that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

L.13 TIME, DATE AND PLACE PROPOSALS ARE DUE -- IIPS (MAY 2003)

Proposals and amendments of proposals must be received by January 4, 2005, not later than 8:00 PM Eastern Time. You are encouraged to transmit your application well before the deadline in order to prevent any transmission difficulties.

PROPOSALS, OR PROPOSAL FILES, THAT HAVE AN IIPS DATE/TIME STAMP LATER THAN THE DEADLINE WILL NOT BE REVIEWED OR CONSIDERED FOR AWARD.

L.14 IIPS PROPOSAL PREPARATION INSTRUCTIONS - GENERAL (SEPT 2003)

Proposals are expected to conform to the solicitation provision entitled "Instructions to Offers - Competitive Acquisition" and be prepared in accordance with this section. Bidders/Offerors are advised that the submission of your proposal in an electronic format is required utilizing the Industry Interactive Procurement System (IIPS) through the Internet at <http://e-center.doe.gov/>. IIPS provides the medium for disseminating solicitations, receiving proposals, and evaluating proposals in a paperless environment. Individuals who have the authority to enter their company into a legally binding contract and intend to submit proposals via the IIPS system must register and receive confirmation that they registered prior to being able to submit an application on the IIPS System. **An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at <http://e-center.doe.gov> and then clicking on the "Help" button.** Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at IIPS_HelpDesk@e-center.doe.gov or call the Help Desk at (800) 683-0751.

To aid in evaluation, proposals shall be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate), and logically assembled. All pages of each part shall be appropriately numbered, and identified with the name of the offeror, the date, and the solicitation number to the extent practicable. Proposal files are to be formatted in one of the following applications: **Adobe Acrobat PDF, Microsoft Word (2002 or earlier), and/or Microsoft Excel (2002 or earlier).**

OVERALL ARRANGEMENT OF PROPOSAL

The overall proposal shall consist of 3 physically separated volumes, individually entitled as stated below and submitted through IIPS at <https://e-center.doe.gov>.

PROPOSAL VOLUME -- TITLE	PAGE LIMITATION
Volume I -- Offer and Other Documents	None
Volume II -- Technical Proposal	35 pages (excluding cover page, table of contents, resumes, organization and staffing plan, and past performance)
Volume III -- Cost Proposal	None

ELECTRONIC SUBMISSION

Proposals must be submitted through the DOE Industry Interactive Procurement System (IIPS) at <http://e-center.doe.gov> in accordance with the instructions in this solicitation. **ONLY PROPOSALS SUBMITTED**

THROUGH IIPS WILL BE CONSIDERED FOR AWARD.

You are encouraged to test the IIPS submission of proposals. An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at <http://e-center.doe.gov> and then clicking on the "Help" button.

As indicated previously in this solicitation, FAR 52.215-1 Instructions to Offerors - Competitive Acquisition, section (c)(3)(ii)(A)(1) applies to this solicitation.

Electronic files of a large size may take a considerable amount of time to upload. It is your responsibility to allow an adequate amount of time for your proposal submission.

ELECTRONIC SIGNATURE

Proposals submitted through IIPS constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the applicant to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

IIPS REGISTRATION

In order to submit a proposal, you must be authorized by the applicant (i.e., institution or business entity) to submit a proposal on its behalf and you must register in IIPS. You are encouraged to register as soon as possible. You only have to register once to apply for any DOE award. To register:

- Go to the IIPS website at <http://e-center.doe.gov>.
- Click on the "Register" button on the left.
- Click on the box that says, "Check this box for Acquisitions greater than Simplified Acquisitions threshold or financial assistance"
- Click on "Proceed to Form".
- Read the "Security Alert" and click on "Yes" to proceed.
- Read the "Notice of Disclaimer" and click on "I Accept".
- Complete the Registration Form.
- Click on "Submit Registration". You will receive an acknowledgement confirming receipt of your registration.

Then you will receive an email confirming successful registration. If you do not receive an email confirmation within one business day, contact the IIPS Help Desk at 1-800-683-0751 and select option 1, or send an email to HelpDesk@e-center.doe.gov.

Note the user name on your confirmation and your password for future reference. You must use this user name and password for any proposals submitted in IIPS.

L.15 PREPARATION INSTRUCTIONS: VOLUME I - OFFER AND OTHER DOCUMENTS (AUG 2003)

Volume I, Offer and Other Documents consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgments, justification for noncompetitive proposed subcontracts, identification of technical data to be withheld, request for waiver of patent clauses, and any deviations taken .

When the applicant begins to "Create Proposal," the applicant will complete the required fields and attach the following files to the link identified as: Attach Volume I/Offer or Other Document .

For consistency, the applicant is instructed to use the file names specified below,. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e, ".pdf" for Adobe Acrobat, or ".doc" for

Word files:

(a) FORMAT AND CONTENT

Volume I, Offer and Other Documents, shall include the following documents (in the order listed):

	MANDATORY FILE	FILE NAME
File 1	Offer Cover Sheet	Offer Cover Sheet---
File 2	SF33 Form -- Solicitation, Offer and Award	SF33.---
File 3	Section K - Representations and Certifications	SectionK.---
File 4	Exceptions and Deviations	Exception.---

(b) FILE 1, OFFER COVER SHEET

The Offer Cover Sheet shall consist of Company Name, address, telephone number, line of business, Chief Executive Officer/Key Manager, and DUNS number as required in FAR Clause 52.204-6 Data Universal Numbering System (DUNS) Number (OCT 2003).

(c) FILE 2, SF33 FORM - SOLICITATION, OFFER AND AWARD

The SF33 Form has been uploaded with the solicitation, as a separate document (SF33.doc), which can be used for the offeror to complete, save and submit as File 1. The following areas must be completed on the SF33:

- (1) Offerors shall complete Blocks 12, 15A, 15B, 15C, 16, and sign in block 17 (typed name of authorized organizational representative). The SF33 is to be fully executed, including the acknowledgment of amendments, if applicable.
- (2) The offeror's Acceptance Period (See Block 12) entered shall not be less than 180 days.
- (3) Signature Authority. The person signing the SF33 must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects. Proposals submitted through IIPS constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the applicant to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

(d) FILE 3, SECTION K - REPRESENTATIONS AND CERTIFICATIONS

Section K has been uploaded with the solicitation, as a separate Word document (SectionK.doc), which can be used for the offeror to complete, save and submit as File 2. Offeror Representations and Certifications included under Section K of this solicitation are to be fully executed.

(e) FILE 4, EXCEPTIONS AND DEVIATIONS

The offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the model contract, Offeror Representations and Certifications, and the requirements included in Volume I -- Offer and Other Documents, Volume II - Technical Proposal, Volume III -- Cost Proposal and Volume IV -- Business Management Proposal, if applicable. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. Any exceptions or deviations may make the proposal unacceptable for award without discussions. Any exceptions or deviations to Section I of the RFP, or any FAR or DEAR clauses elsewhere in the RFP, will make the proposal non-responsive to this RFP.

L.16 PREPARATION INSTRUCTIONS: VOLUME II - TECHNICAL PROPOSAL (MAY 2003)

Volume II - Technical Proposal consists of the offeror's outline addressing the technical and management aspects of the acquisition, his capabilities and what he will do to satisfy the requirements of the Statement of Work. Since the Technical Proposal will be evaluated to determine such matters as understanding of the work to be performed, technical approach, and potential for completing the desired work, it should be specific and complete in every detail. The proposal should be practical and be prepared simply and economically, providing a straightforward, concise delineation of what it is the offeror will do to satisfy the Department of Energy's requirements as set forth in Part III, Section J, Attachment A.

The Technical Proposal shall be evaluated strictly on the merit of the material submitted. No contractual cost information is to be included in the Technical Proposal. Where estimated direct productive labor hours (DPLH) will provide clarity, they shall be quoted in DPLH figures only, with no indication as to the cost of these DPLH.

The proposal shall contain a description of the proposed lines of investigation, method of approach to the problem(s), any recommended changes to the Statement of Work, the phases or steps into which this project should logically be divided, estimated time required to complete each phase or step, and any other information considered pertinent to the problem(s).

The proposal shall not merely offer to perform work in accordance with the Statement of Work but shall describe the actual work proposed. The Statement of Work reflects the problems and objective of the program under consideration; therefore, repeating the scope of work without sufficient elaboration will not be acceptable.

(a) FORMAT AND CONTENT

When the Offeror begins to "Create Proposal," the Offeror will create an IIPS cover page and attach the required files to the link identified as: Attach Volume 2/ Technical Proposal.

For consistency, the Offeror is instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e, ".pdf" for Adobe Acrobat or ".doc" for Word files:

	MANDATORY FILES	FILENAME
File 1	Technical Approach Discussion	TECHNICAL.---
File 2	Past Performance	PAST PERFORMANCE.---
File 3	Organization and Staffing Plan	ORGANIZATION AND STAFFING.---
File 4	Resumes of Key Personnel, Publications, and/or Letters of Commitment, if applicable.	RESUMES.---
File 5	Management Approach	MANAGEMENT.---

(b) FILE 1, TECHNICAL APPROACH DISCUSSION

It is requested that the technical approach discussion not exceed twenty-five (25) pages excluding the cover page and table of contents. Single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough, concise technical discussion can be prepared within the requested page limit. A 10% reduction in score will be assigned to proposals that contain a technical approach discussion file that exceeds the page limitation.

To help facilitate the review process and to insure addressing all the review criteria, the Offeror shall use the following format when preparing the technical discussion file. This format relates to the technical evaluation criteria found in Part IV -- Section M. Alternate heading names and additional headings may be included as desired.

COVER PAGE

The technical discussion file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. The title of the proposed effort should be concise and descriptive of the work to be performed. All subsequent pages shall be appropriately numbered and identified with the name of the applicant, the date, and the solicitation number to the extent practicable

TABLE OF CONTENTS

The technical discussion file shall include a Table of Contents to facilitate locating the elements of the proposal. All exhibits should be identified.

TECHNICAL APPROACH

This section shall contain the major portion of the Technical Proposal. It shall clearly address each of the Technical Proposal evaluation criteria in Part IV -- Section M, and at a minimum cover the subordinate factors or subcriteria listed there under, if any. It should be presented in as much detail as practical and include the following aspects for appropriate criteria or subordinate factors.

The offeror should describe in detail the proposed approach to providing support for and management of the identified programs. This file should include a description of past work in the programs to show an understanding of the history. The description should include the creation of the programs and an understanding of participating entities in the past. The file should also include a detailed discussion of the programs' current goals and why they can or can not be met, along with any suggestions on improved program goals. This file should include an understanding of the current structure for the programs starting with the government and concluding with the public and how the offeror would participate in and solidify this structure. The file should include a discussion of why these programs are necessary and the services provided to the public.

(c) FILE 2, PAST PERFORMANCE

It is requested that the Past Performance information be single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. The page limitation set forth in L.13 for Volume II does not apply to File 2, Past Performance. Offerors shall submit the following information as part of their proposal for both the offeror and proposed major subcontracts:

A list of the last 5 contracts and subcontracts for similar services completed during the past three (3) years, and all contracts and subcontracts currently in process with a total contract value greater than or equal to \$100,000 is mandatory. Contracts listed may include those entered into by the Federal Government, agencies of state and local Governments and commercial customers. Offerors that are newly formed entities without prior contracts should list 5 contracts and/or subcontracts for their key personnel. Include the following information for each contract and subcontract of similar services:

- (1) Name of contracting activity
- (2) Contract number
- (3) Contract type
- (4) Total contract value
- (5) Contract work
- (6) Contracting Activity Contracting Officer and telephone number
- (7) Contracting Activity Technical Program/Project Manager and telephone number
- (8) List of major subcontractors
- (9) Period of performance

The offeror may provide information on problems encountered on the contracts and subcontracts identified above for contracts of similar services and corrective actions taken to resolve those problems. Offerors should not provide general information on their performance on the identified contracts. General performance information will be

obtained from the references.

The offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, for example, the Malcolm Baldrige Quality Award, other Government quality awards, and private sector awards or certifications. Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

References other than those identified by the offeror may be contacted by the Government with the information received used in the evaluation of the offeror's past performance.

(d) FILE 3, ORGANIZATION AND STAFFING PLAN

It is requested that the Organization and Staffing Plan be single spaced, using 12 point font, 1" margins, when printed will fit on size 8 1/2" by 11" paper, and must be in word (.doc), adobe (.pdf), or excel (.xls) format. A 10% reduction in score will be assigned to proposals that do not conform with the required format. The page limitation set forth in L.13 for Volume II does not apply to File 3, Organization and Staffing Plan.

The offeror shall describe the proposed organizational structure for performance of the contract (including subcontractors or teaming arrangements, if any), the respective roles and responsibilities, the rationale, and the priority of the proposed effort within the offeror's organization. The offeror shall describe and provide a rationale for the alignment of the proposed organization with that of the government, i.e. both DOE Headquarters and NETL.

The Staffing Plan shall include a detailed structure for the work identified in the Statement of Work (SOW) provided based on the Contractor's understanding of the requirements listed. Provide an organizational chart, including position titles and labor hours. In addition, provide position descriptions and proposed minimum qualifications for each position indicated. The staffing plan should be complete with positions identified for all staff (including project management). All positions that the Contractor is proposing to be filled with subcontractor staff or teaming arrangements shall be clearly identified. A description of the lines of communication within each unit shown on the organizational chart(s) and responsibility for requesting and assuring support between units of the proposed project structure and from other elements of the company must be shown in relation to the requirements of the SOW.

(e) FILE 4, RESUMES OF KEY PERSONNEL, PUBLICATIONS, AND/OR LETTERS OF COMMITMENT, IF APPLICABLE.

This file shall contain resumes of key personnel, qualifications and experience of participating organizations, additional pertinent publications, letters of commitment, etc. It is requested that the Resumes of Key Personnel, Critical Personnel and/or Letters of Commitment be single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. A 10% reduction in score will be assigned to proposals that do not conform with the required format. The page limitation set forth in L.13 for Volume II does not apply to File 4, Resumes of Key Personnel and/or Letters of Commitment.

In this section, the Offeror must introduce and clearly indicate their selected team of key personnel and demonstrate why they should be considered qualified and effective. All key personnel are those personnel that will be incorporated into Section H, Clause "Key Personnel/Program Manager (MAR 1998)". Letters of Commitment must be included for all personnel identified as Key Personnel. The key personnel will be evaluated in the areas of education, operational experience, management experience, and professional development based upon the requirements of the RFP. In addition, it is requested that the offeror provide resumes for staff other than key personnel that are considered critical to the accomplishment of the work. These critical personnel will be reviewed to determine their caliber and fit to accomplish the work as described in the Statement of Work.

Submit and clearly identify personnel resumes for all individuals to be committed to the contract as key personnel and those identified as critical personnel. Each resume must follow the format provided below. Each must contain the names and telephone numbers of at least three business-related references not associated with your company. Documentation shall be provided indicating all key personnel's firm commitment to accept the position(s) proposed.

An indication of the percentage of time each key personnel will dedicate to the contract must be provided.

NAME:**PROPOSED POSITION (Title and Description):****EDUCATION:**

List each degree received, the name of the College/University granting the degree, and the year in which the degree was received. Only degrees from accredited institutions shall be cited. Degrees from institutions that are not accredited will not be considered.

PROFESSIONAL AND/OR TECHNICAL TRAINING:

For each relevant training course cited, list the title of the training, the training institution, the date of the training, and any special certifications or licensing received for the training.

PROFESSIONAL REGISTRATION/CERTIFICATION:

For each relevant professional registration/certification, list Title, State/Society, Year, and a brief statement detailing activities/accomplishments.

JOB ASSIGNMENTS:

Starting with the present or most recent position, list (at a minimum) the last three (3) major job assignments.

Supervisors and customer references may be contacted during the proposal evaluation. Experience prior to 1988 should be summarized for those individuals having more than 15 years of work experience. For each job assignment provide the following information:

Dates:

Title:

Employer Name:

Address:

Telephone Number:

Type of Business:

Supervisor Name:

HONORS, AWARDS, AND OTHER ACHIEVEMENTS:

Provide a brief statement detailing relevant accomplishments, publications, awards, honors, etc.

(f) FILE 5, MANAGEMENT APPROACH

It is requested that the Management Approach discussion not exceed ten (10) pages (excluding cover page and table of contents), single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough, concise management approach discussion can be prepared within the requested page limit. A 10% reduction in score will be assigned to proposals that contain a management approach discussion file that exceeds the page limitation. This section shall explain the Offeror's management and organizational approach and understanding of the requirements identified in Section J, Attachment A, Statement of Work (SOW). It should be presented in as much detail as practical and include the following:

The offeror shall describe its management approach, including the procedures for scheduling and schedule control, assigning and monitoring technical performance, cost control, documentation of contract performance activities, report preparation, and deliverable control that will be implemented to accomplish tasks under the Statement of Work.

L.17 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III COST PROPOSAL (NOV 2000)**A. GENERAL**

Volume III, Cost Proposal shall consist of the offeror's estimated costs to perform the desired work as set forth in the Statement of Work on a cost plus fixed fee, task order basis. Since the Cost Proposal shall be evaluated to determine such matters as cost realism, reasonableness, understanding of the magnitude of effort, and probable cost to the

Government, as well as being the basis for any necessary cost negotiation, it should be accurate, complete, and well documented. As prescribed by FAR 52.215-20 with Alternate 1, the offeror shall submit cost or pricing data and supporting attachments in accordance with the Cost Proposal preparation instructions/format provided herein.

- (1) The Cost Proposal shall consist of the offeror's estimated cost plus fixed fee to perform the required work, as set forth in the Statement of Work, based on the Direct Productive Labor Hours (DPLH) established in the attached exhibits and the cost parameters established below. All cost proposals must be based upon these criteria. Alternative proposals are not acceptable. This information is DOE's best estimate of the resources that will be required to complete the effort. The DOE's sole intention in setting forth these criteria is to provide the Offerors an equal basis for submitting cost proposals. **Contractual cost information is not to be included in the Technical Proposal.**
- (2) Identification: All forms, tables, and exhibits must be identified and listed in the table of contents or index. All pages, including forms, must be numbered.
- (3) Modification to Cost Proposal: Any modification to the Cost Proposal shall clearly indicate the cost impact of the modification to the same level of detail shown in the original proposal. Tables or Exhibits impacted by any change shall be clearly identified.
- (4) Definition of Terms:
 - (a) Prime Participant: Business entities other than the offeror who will act on behalf of the offeror under the contract through the expenditure of Direct Productive Labor Hours (DPLH's). Prime participants may be subcontractors, teaming/joint venture partners, or interdivisional transfers.
- (5) Partnership/Teaming/Subcontracts (Including Intercompany Transfers): **For each organization acting as prime participant, cost information shall be required and furnished in the same format and level of detail as prescribed herein for the offeror.** The offeror shall provide a summary schedule totaling the efforts of all the participants.
- (6) Direct Productive Labor Hours (DPLH):

The offeror shall propose direct productive labor hours in accordance with the solicitation labor categories and labor hour requirements provided. Direct Labor shall be proposed on the basis of Direct Productive Labor Hours (DPLH), i.e., estimated number of hours on the job. For the purpose of this solicitation, a full time equivalent (FTE) employee is equated to 1800 DPLH. All nonproductive labor hours (vacations, holidays, sick leave, etc.) shall be charged as an indirect cost included in the offeror's fringe benefit or labor overhead pool of expenses.
- (7) Direct Labor Categories: The offeror shall identify proposed direct labor rates for each of the offeror's labor categories in accordance with the offeror's accounting system. Rates of any prime participant shall be identified with the same level of detail as for the offeror.
- (8) Rounding: Final monetary extensions shall be expressed in whole dollars.
- (9) Other Direct Costs: Other direct costs for travel, training, and materials and supplies must be proposed at the levels identified in Exhibit E of the solicitation. The subcontracts cost category shall not include labor cost for DPLH of prime participants.
- (10) Format: To facilitate the Government's review, the offeror shall submit a copy of the Cost Proposal Exhibits (File 2) using an EXCEL (Version XP or lower) spreadsheet. The Contract Pricing Proposal Cover Sheet (File 1) and Cost Discussion (File 3) shall be submitted as Word documents.

(11) Contract Start Date: For cost proposal preparation, the estimated start date of contract performance is December 15, 2004.

- B. Format and Content. The offeror shall submit Exhibits A through E to describe the cost of the offeror's effort inclusive of prime participants. The offeror shall also identify and discuss the contingencies used in developing the proposed cost/price and the basis for the cost/price estimate for each element, that is, how the labor rates were developed, how indirect rates were calculated and developed, fee basis, etc.

When the offeror begins to "Create Proposal" in IIPS, the offeror will complete the required fields and attach the following files to the link identified as: Attach Volume III/Cost Proposal.

For consistency, the applicant is instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of this document, i.e., ".pdf" for Adobe Acrobat, ".xls" for EXCEL, or ".doc" for Word files.

Volume III, Cost Proposal, shall include the following documents (in the order listed):

MANDATORY FILE	FILE NAME
File 1 Contract Pricing Proposal Cover Sheet	Cover Sheet.doc
File 2 Cost Exhibits A through E	Cost Exhibits.xls
File 3 Cost Discussion	Cost Discussion.doc

File 1 – CONTRACT PRICING PROPOSAL COVER SHEET

The Contract Pricing Proposal Cover Sheet (NETL F 534.1-1) is available for downloading on the NETL homepage at:

http://www.netl.doe.gov/business/forms/534_1-1.doc

The offeror and each prime participant shall submit one set of fully executed Contract Pricing Proposal Cover Sheets. A set consists of one Contract Pricing Proposal Cover Sheet which summarizes the total proposed five year effort and a separate Contract Pricing Proposal Cover Sheet for each of the following: base period of 3 years, Option Period 1, and Option Period 2. The instructions contained in Table 15-2 of FAR Subpart 15 shall be followed to provide adequate supporting documentation for the estimated costs indicated on the Contract Pricing Proposal Cover Sheet (blocks 6A through 6C).

File 2 – COST EXHIBITS A through E

File 2 shall consist of exhibits A through E in the format as provided in Attachment C to this solicitation. To facilitate the Government's review, the offeror shall provide the Cost Exhibits (File 2) using an EXCEL (Version XP or lower) spreadsheet.

Exhibit A-- Summary of Proposed Costs and Fee by Year

The offeror and each prime participant shall provide a summary by individual cost element in order to derive total cost and fee for the contract over a 5-year period. In addition, if prime participants are proposed, the offeror shall provide a separate schedule (in addition to the above), which totals all of the individual schedules for the contract over a 5-year period. Each cost element on the exhibit must be reported. Additional cost elements (e.g. FCCOM) may be added as needed to reflect the offeror's and prime participants' accounting systems. All fee shall be proposed by the offeror and be proposed as both an absolute number and as a percentage of the proposed estimated cost.

Exhibit B1 through B4 -- Direct Labor Categories and Position Descriptions

Exhibit B1 – Summary Distribution of RFP Direct Productive Labor Hours (DPLH)

The offeror shall provide a DPLH inventory showing the distribution of the DPLH (total hours provided in this solicitation) required for each labor category to be performed by the offeror's organization and by each prime participant organization. Solicitation Direct Labor Category titles are provided only for the purpose of standardizing the alignment of the offeror's and prime participant's labor categories to the solicitation labor categories. This approach was chosen to establish common guidance for cost proposal preparation and to aid in cost proposal evaluation.

Exhibit B2 - Position Descriptions of Direct Labor Categories

The offeror and prime participants shall provide job position descriptions for each corresponding direct labor category. The descriptions and minimum qualifications shall be the same as those provided in the proposed Staffing Plan (L.15, File 3). **(The position descriptions of Exhibit B-2 shall be incorporated as Section J, Attachment C to the contract.)**

Exhibit B3 - Reconciliation of Labor Categories

The offeror and prime participants shall provide a reconciliation of specified labor categories in the solicitation to their normal labor categories.

Exhibit B4 – Direct Labor Hours, Rates and Costs by Contract Year

The specified DPLH are to be used in the development of cost proposals. This level of effort, required by NETL, is equivalent to 33 FTEs. The offeror shall provide the direct labor rates and associated direct labor costs by contract year. Any assumptions about escalation of labor rates shall be explained in a footnote to the schedule.

Exhibit C1 through C3 - Indirect Expenses

These exhibits provide the formats for the individual expense items for each indirect pool by item name and dollar amount. Previous fiscal year's history and current fiscal year's projected expenses shall be provided as well as the projected costs for the next five years (contract period and two option periods). The format of these exhibits shall be modified to reflect the offeror's accounting system

Exhibit C1 - Fringe Benefit Expense Schedule

On separate schedules, the offeror and prime participants shall provide their most recently completed fiscal year and current fiscal year projected fringe benefit costs and rates and then the projected fringe benefit costs and rate calculations for each year of the contract period and two option years. An explanation of the allocation base shall be provided in a footnote to the schedule.

Exhibit C2 - Overhead Expense Schedule

On separate schedules, the offeror and prime participants shall provide their most recently completed fiscal year and the current fiscal year projected overhead pools, allocation bases, and rates. The offeror and prime participants shall also provide overhead cost and rate projections for the contract period and two option years. An explanation of the allocation base shall be provided in a footnote to the schedule.

Exhibit C3 - General and Administrative (G & A) Expense Schedule

On separate schedules, the offeror and prime participants shall provide their most recently completed fiscal year and current fiscal year projected G & A costs and rates and then the projected G& A costs and rate calculation for the each year of the contract period and two option years. An explanation of the allocation base shall be provided in a footnote to the schedule.

Exhibit D - Inventory of Personnel as of Date of Proposal Preparation

The offeror shall identify Offeror's and Prime Participants' available personnel by labor category and number of new hires planned.

Exhibit E - Other Direct Costs (Provided by NETL)

The offeror shall use the NETL specified other direct costs (found in Section J, Attachment C, Exhibit E) in preparation of its cost proposal. These costs include travel, training, and materials and supplies.

File 3 COST DISCUSSION

The offeror shall submit a brief discussion on their Compensation for Professional Employees under Federal Contracts for Services, Estimating Procedures, Company Compensation Policies, and Audit and Contract Administrative Cognizance, as indicated below.

Compensation for Professional Employees Under Federal Contracts for Services.

The offeror shall provide a proposed labor relations and total compensation plan for all work required under this solicitation. Compensation levels proposed shall clearly reflect the offeror's understanding of work to be performed and indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. Salary rates or ranges shall take into account differences in skills, the complexity of various disciplines, and professional job difficulty. The offeror shall include the following information:

- (a) The offeror shall provide a profile of the skill mix by classification for exempt (non-supervisory) and nonexempt positions.
 - (1) Provide a schedule of direct labor by population, by job title, hire rate, and average rate by Fiscal Year. If "Rate Ranges" are used, explain the method of progression from minimum to maximum.
 - (2) Furnish any supporting information that the Wage and Salary Structure is competitive with local conditions which will insure the recruitment and retention of qualified personnel for this contract.
 - (3) Explain formula and frequency of adjustment if your wage and salary plan provides a "cost of living adjustment".
 - (4) List the fringe benefits and the estimated cost per hour for exempt and non-exempt personnel including holidays, sick leave, vacation, severance, pensions, insurance (hospital, disability, medical, dental, life, etc.).
 - (5) If offeror, company or other divisions of offeror parent company are performing a Government contract in the local area or at the same site of performance as this Contract, identify any differences in the proposed "wage and salary plan" including fringes and explain the rationale for these differences.
- (b) Identify any Labor Unions having Collective Bargaining Agreements with the offeror's company covering classes of employees contemplated in this solicitation.
- (c) Briefly define the terms "exempt" and "non-exempt" as used by the offeror's company.

Estimating Procedure.

The offeror shall provide an explanation of the estimating procedures used. It is essential that there be a clear understanding of the below-listed factors for effective negotiations. The offeror shall cover the following in the estimating procedures explanation:

- a. The existing verifiable data;
- b. The judgmental factors applied in projecting from known data to the estimate;
- c. The contingencies used by the offeror in the proposed costs; and
- d. The basis of the cost estimate for each element of cost, to include how the labor rates and the indirect rates were developed, choice of subcontracts/consultants material prices, etc.

Company Compensation Policies.

The offeror shall briefly describe company compensation policies in the following areas (existing company publications may be furnished):

- a. Salary increases:
 - (1) Merit.
 - (2) Cost-of-Living.
 - (3) General.
 - (4) Other.
- b. Fringe Benefits:
 - (1) Paid absences (vacations, sick leave, etc.).
 - (2) Insurance contributions.
 - (3) Retirement.
 - (4) Other.
- c. Travel/Per Diem.
- d. Relocation.
- e. Bonuses/Other Employee Incentives.
- f. Severance.
- g. Overtime.
- h. Uncompensated overtime.
- i. Shift Premium.

Audit and Contract Administrative Cognizance.

Provide the name, address, and phone number of the Government audit office and contract administration office for the offeror and any proposed prime participants or subcontractors on each Contract Pricing Proposal Cover Sheet (Block 9A and 9B). The offeror shall also submit any current Indirect Rate Agreements or notices established by their Cognizant Federal Agency as required by Part I, Section B, clause entitled "Annual Indirect Rate Submission" of this solicitation. Audit and Indirect Rate Agreements may be submitted as a separate .pdf file (entitled Audit-Rate Agreement.pdf).

L.18 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective

Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

L.19 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA. (OCT 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include -

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

L.20 INFORMATION OF AWARD (NOV 1997)

Written notice to unsuccessful offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

L.21 DISPOSITION OF SOLICITATION MATERIALS AND PROPOSALS (FEB 1998)

Drawings, specifications, and other documents supplied with the solicitation may be retained by the offeror (unless there is a requirement for a document to be completed and returned as a part of the offer).

Offeror's Proposals will not be returned (except for timely withdrawals).

L.22 52.233-2 SERVICE OF PROTEST. (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Mail Stop I07, Morgantown, WV 26507-0880. (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

L.23 952.233-2 SERVICE OF PROTEST.

As prescribed in 48 CFR 933.106(a), add the following to the end of the provision at FAR 52.233-2:

(c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

L.24 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY (SEP 1996)

(a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103- 355. Such request must be in writing and addressed to the Contracting Officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

L.25 952.233-5 AGENCY PROTEST REVIEW (SEP 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the Contracting Officer prior to filing a protest.

SECTION M - EVALUATION FACTORS FOR AWARD**M.1 GENERAL (QUALIFICATION) (NOV 1997)**

(a) Proposals will be evaluated in accordance with applicable DOE acquisition policies and procedures. An evaluation will be performed to determine the offeror's understanding of work to be performed, technical approach, business management approach, potential for completion the work as specified in the solicitation, cost reasonableness, the probable cost to the Government, and ranking with competing offers.

(b) Award will be made to that responsible offeror(s), whose offer(s), conforming to this solicitation, is (are) considered most advantageous to the Government, considering the Evaluation Criteria in this Section M.

M.2 BASIS FOR CONTRACT AWARD

The Government intends to award one contract to the responsible offeror whose proposal is responsive to the solicitation and is determined to be the best value to the Government. Selection of the best value to the Government will be achieved through a process of evaluating the strengths and weaknesses of each offeror's proposal in accordance with the evaluation criteria stated in the solicitation. In determining the best value to the Government, the Technical Proposal Criteria are significantly more important than the evaluated cost. The Government is more concerned with obtaining a superior technical proposal than making an award at the lowest evaluated cost. However, the Government will not make an award at a price premium it considers disproportionate to the benefits associated with the evaluated superiority of one technical proposal over another. Thus, to the extent that offerors' technical proposals are evaluated as close or similar in merit, the evaluated cost is most likely to be a determining factor.

M.3 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA (NOV 1997)

(a) The evaluation criteria (other than cost) when combined, are considered significantly more important than cost.

(b) Relative Ranking of Technical Criteria.

Technical Approach	30
Past Performance	30
Organization and Staffing	30
<u>Management Approach</u>	<u>10</u>
TOTAL	100

(c) The offer and other documents proposal is to be evaluated for adequacy and compliance with the solicitation.

M.4 EVALUATION CRITERIA (MAY 1999)**A. Technical Criteria**

All proposals submitted in response to this solicitation will be evaluated and scored in accordance with the following criteria and weights.

1. Technical Approach (contained in File 1 - 30%)

- Effectiveness and soundness of the proposed approach to providing support for and management of the Energy Star and Equipment Standards and Analysis programs
- Knowledge and understanding of past and current work in the program area proposed and how the proposed efforts build on or expand from these prior efforts
- Responsiveness and relevance of the application to the programmatic research goals and requirements identified in this solicitation
- Potential to provide economic benefits to end-use U.S. consumers

2. Past Performance (contained in File 2 - 30%)

- Extent of experience in management of activities or programs relevant or comparable to Energy Star and Equipment Standards and Analysis
- Performance of management of activities or programs relevant or comparable to Energy Star and Equipment Standards and Analysis

(Note: Offerors without a record of relevant past performance, or for whom information on past or present performance is not available, will be evaluated neither favorably nor unfavorably on past performance.)

3. Organization and Staffing (contained in Files 3 and 4 - 30%)

- Proposed organization is comprehensive and can meet all of the needs of the Energy Star and Equipment Standards and Analysis Programs
- Proposed personnel in key positions have relevant or related experience to the Energy Star and Equipment Standards and Analysis Programs
- Proposed structure aligns with the tasks in the SOW
- Proposed structure has effective channels of communication between organizational elements and also the government
- Proposed personnel in support positions have training and experience in the tools necessary, e.g., computer applications, communication skills, meeting arrangements, to support the Energy Star and Equipment Standards and Analysis Programs

4. Management Approach (contained in File 5 - 10%)

- Existing cost control systems and/or procedures to effectively manage all financial aspects of the contract, including systems and/or procedures for work between and within any proposed subcontractors.
- Existing schedule control systems and/or procedures to effectively manage all schedule aspects of the contract, including systems and/or procedures for work between and within any proposed subcontractors.
- Probable effectiveness of cost and schedule systems and/or procedures.
- Adequacy of plan(s) to roll-up costs, schedule, and performance data for reporting to the government

B. Cost Criteria.

The cost proposal will not be point scored. It will be evaluated to establish most probable cost to the Government. The cost proposal will also be used as a guide to determine the Offeror's understanding of the requirements of the RFP and to assess the validity of the Offeror's approach to performing the work in accordance with the technical requirements of the RFP. The cost proposed in the Cost Exhibits represent the work of the Statement of Work. All cost evaluation criteria are of equal importance. Cost evaluation criteria that will be considered are:

(a) Criterion 1: Cost Realism, Accuracy, and Reasonableness

The Government will determine (i.e. rate as acceptable or unacceptable) whether the Offeror's cost proposal is realistic (i.e. adequate to accomplish of the RFP's Statement of Work), accurate, and reasonable (i.e. proposed costs are generally recognized as ordinary and necessary for contract performance and do not exceed those which would be incurred by an ordinary prudent person in the conduct of competitive business).

(b) Criterion 2: The Evaluated Most Probable Cost to the Government

The Government will establish the most probable cost to the Government by evaluating all elements of each Offeror's cost proposal that could impact estimated costs.

M.5 52.217-5 EVALUATION OF OPTIONS. (JUL 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).